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CANAL OPERATION UNDER 1977 TREATY—PART 1

HEARINGS
BEFORE THE
SUBCOMMITTEE ON THE PANAMA CANAL
OF THE
COMMITTEE ON
MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES
NINETY-SIXTH CONGRESS

FIRST SESSION

ON

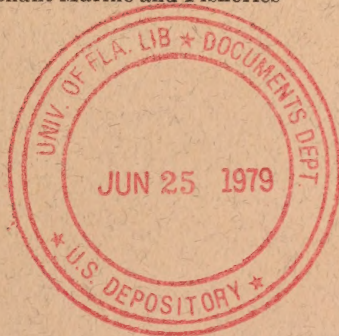
H.R. 111, H.R. 454, H.R. 1511, H.R. 1716,
H.R. 1958, H.R. 2522

PROVIDING A BASIS FOR THE EFFICIENT OPERATION OF THE
PANAMA CANAL AND PROVIDING FOR THE RIGHTS AND RE-
SPONSIBILITIES OF THE UNITED STATES UNDER THE 1977
TREATIES BETWEEN THE UNITED STATES AND PANAMA

FEBRUARY 14, 15, 26, 28; MARCH 7, 13, 14, 1979—WASHINGTON, D.C.
FEBRUARY 23, 24, 1979—BALBOA, CANAL ZONE

Serial No. 96-1

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U.S. GOVERNMENT PRINTING OFFICE

44-394 O

WASHINGTON : 1979

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CANAL OPERATION UNDER 1977 TREATY

WEDNESDAY, FEBRUARY 14, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE PANAMA CANAL,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:10 a.m., in room 1334, Longworth House Office Building, Hon. Carroll Hubbard, chairman of the subcommittee, presiding.

Present: Representatives Hubbard, Murphy, Bonior, Bauman, Treen, Carney, and Dornan.

Staff Present: Terrence W. Modglin, staff director; Ernest W. Corrado, chief counsel; Larry O'Brien, deputy chief counsel; Bernard Tannenbaum, special counsel; Carl L. Perian, chief of staff; Kenneth C. Fendley, professional staff member; Nicholas T. Nonnenmacher, minority professional staff member; W. Merrill Whitman, consultant; Anita C. Brown, clerk.

Mr. HUBBARD. May I have your attention, please?

We have been waiting for Chairman Murphy, and I understand he is on his way to the hearings. Let me begin. We will delay his part, which is scheduled to precede position statements from Members of Congress who have honored us by being with us this morning.

My name is Carroll Hubbard, the new chairman of the Panama Canal Subcommittee. At this time, we have present with us Congressmen David Treen of Louisiana; Congressman Bob Bauman of Maryland; and Congressman Bill Carney from New York * * * all members from the minority.

The hearings of the Subcommittee on the Panama Canal will now come to order. I want to extend a cordial welcome to our witnesses, guests and visitors attending today's hearings. I am happy to have the honor of chairing these hearings as the new chairman of the Panama Canal Subcommittee. The insight and sensitivity of previous chairmen of this subcommittee, including my predecessor, the late Ralph Metcalfe, for whom I had much affection and admiration, are qualities I desire to emulate and develop. In fact, I am sure all of us on this subcommittee remember, with gratitude, the efforts of the late Ralph Metcalfe of Chicago.

At this point, it is appropriate for our Chairman of the Full Committee to make an opening statement prior to mine, and I defer to the distinguished Chairman of our Full Committee on Merchant Marine and Fisheries, our beloved colleague, Congressman John Murphy of New York. I have great admiration for the energy and statesmanship shown by our chairman, who has been

the only Member of Congress to come forward with his own response to the administration's preferred proposal for Panama Canal implementing legislation. Congressman Kika de la Garza from Texas and I are privileged to cosponsor Chairman Murphy's bill of implementation.

I congratulate you, Mr. Chairman, and say to each who is present that it is my belief that you are demonstrating the vitality and independence of the legislative branch * * * qualities which you have urged each of us in the House to pursue.

Chairman Murphy.

The CHAIRMAN. I want to thank my colleague from Kentucky for his kind words; they are probably the first and kindest that I have received in this Congress so far.

The question before us today is that this committee, particularly, this subcommittee and the full committee, and of course the House, will have to establish, through the extensive hearings that Chairman Hubbard has announced, the foundation and base for the proper implementation language for the treaties that the United States entered into with the Republic of Panama in the last Congress.

Today is the first day that this subcommittee begins its hearings on legislation to provide for the maintenance and operation of the Panama Canal under the terms of the two treaties with Panama signed in Washington on September 7, 1977, and related agreements signed on the same date. Although the treaties enter into force on October 1, 1979, it was recognized during the consideration of the treaties that enactment of legislation would be necessary to give form and content to many of their provisions and to carry other provisions into effect.

Under the Constitution, responsibility for enactment of such legislation rests with the Congress, and these hearings are an essential element in the process by which Congress performs its constitutional role in that respect. The enactment of such legislation primarily rests on the powers conferred by the Constitution on the Congress to regulate commerce, article I, section 8, clause 3; to enact appropriate laws, article I, section 9, clause 9; and to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States, and that is article IV, section 3, clause 2.

In 1971, as chairman of this subcommittee, I stressed the importance of reaching a just settlement of the problems that had developed in our relations with Panama arising out of the construction and operation of the Panama Canal. At that time, I expressly referred to the necessity to resolve such vexatious problems as the continued exercise by the United States of jurisdiction over the Canal Zone over objections by the Republic of Panama, increased participation by Panama in the operations of the canal, and greater economic benefits to Panama from that operation. At the same time, I was concerned about the preservation of the constitutional authority and responsibility of the Congress, particularly in respect to appropriations and the management and disposition of property of the United States.

In 1977, as chairman of the Committee on Merchant Marine and Fisheries, I again expressed my support for the concept of a new

treaty relationship with Panama, but criticized the drafts of the treaties then under consideration as defective in certain respects, which I described in my testimony before the Senate Committee on Foreign Relations on October 5, 1977.

Although some of the defects in the treaties referred to in my testimony on that occasion were corrected or ameliorated in the course of the ratification process, the treaty can become effective and accomplish its basic purpose only through the enactment of legislation.

The legislative problem is further complicated by the theory followed by the drafters of the treaty that the treaty-making power encompasses and supersedes the powers of the Congress to regulate and dispose of property and to disburse moneys of the United States without appropriations by the Congress specifically required by the Constitution, so that provisions of the treaty for transfer of U.S. property and payments to Panama are self-executing.

As soon as the treaties had been signed and the texts made available to the Congress, the Committee on Merchant Marine and Fisheries and this subcommittee, under the chairmanship of the illustrious Representative from Illinois, the late Ralph Metcalfe, promptly began the examination of the future legislative actions that would be required upon ratification of the treaties. Intensive hearings were held by this subcommittee and by the full committee, and voluminous testimony was received on the meaning and effect of the texts of the treaties and the nature of the legislation that would be required to supplement and carry the treaties into effect once they were ratified.

As emphasized in the debates in the Senate during consideration of the treaties, the responsibility of the Congress to enact legislation to effectively carry out the treaties is not limited to the purely formal and ministerial action of ratification of the terms of legislation formulated in the executive branch and proposed to the Congress for consideration. The task of the Congress in the performance of its constitutional power to enact legislation is not a simple one. Rather, it is the function of the Congress, after consideration of such legislative proposals as the executive branch may submit, to draft the terms of the legislation in the form that, in the judgment of Congress, is most conducive to the preservation and advancement of the interests of the United States and, in accordance with constitutional processes, enact such provisions into law.

As I have indicated, Mr. Chairman, this subcommittee and the full committee commenced the exploration of this subject as soon as the texts of the treaties became available. From time to time, the executive branch informally submitted tentative drafts of the legislative language regarded by the executive branch as appropriate or necessary to implement the treaties. On April 5, 1978, one such draft, which was made available to the Senate in response to repeated requests before ratification of the treaty, was published in full in the Congressional Record. This was treated as a definitive draft of a proposal to be submitted at a later date, albeit subject to change. The April 1978 draft was substantially similar to an earlier draft dated March 6, 1978, which was introduced in the 95th Congress by Mr. Hansen of Idaho as H.R. 11634 and was referred jointly to the Committee on Merchant Marine and Fisheries and to

the Committees on International Relations, the Judiciary, and Post Office and Civil Service. This bill has been reintroduced in this Congress as H.R. 454 and has been similarly referred.

Immediately after the tentative drafts prepared in the executive branch became available, intensive work was commenced under my direction to analyze the legislative problem in the light of the treaty provisions and to develop a draft bill to provide for the continued operation of the canal under the new treaties. As a result, on January 15, 1979, the first day of the 96th Congress, I introduced H.R. 111, which was jointly referred to the Committee on Merchant Marine and Fisheries and to the Committees on International Relations, Post Office and Civil Service, and the Judiciary. H.R. 111 is cosponsored by the new chairman of the Panama Canal Subcommittee, Mr. Hubbard of Kentucky, and Mr. de la Garza of Texas. I am happy to report that at this time, Mr. Bauman, the distinguished ranking minority member of this subcommittee, has added his name as a sponsor of the bill.

On January 24, 1979, the executive communication transmitting the draft bill prepared in the executive branch for consideration by the Congress was received, and on January 31, 1979, that bill was introduced by me, along with Mr. Zablocki, Mr. Rodino and Mr. Price. Title II and section 106 of H.R. 1716 have been referred to the Committee on Merchant Marine and Fisheries, along with title V and section 2 which are concurrently referred to this committee and the other committees considering H.R. 111.

H.R. 454 is also the subject of these hearings. One other bill, H.R. 1511, introduced by Mr. Hansen on January 25, 1979, would require express authorization by the Congress for the use of funds or the transfer of property of the United States for implementation of the treaty, both of which requirements are incorporated in H.R. 111.

Mr. Chairman, this rather detailed description of the way in which these various bills have arrived for consideration in your subcommittee sets the stage for your consideration of the matters of legislative policy that much be resolved before the new Panama Canal treaties enter into force. The provisions of H.R. 1716 referred to the Committee on Merchant Marine and Fisheries and the provisions of H.R. 111 provide certain clear-cut choices in legislative policy that must be resolved by the Congress with the assistance of this subcommittee and the full committee.

Although there are other important differences between the two bills, two fundamental matters of constitutional and historical significance that transcend the importance of the immediate legislative problem require resolution in the framing of this legislation. I refer to the powers of the Congress under the Constitution to make appropriations and to make rules for the regulation of property of the United States and to dispose of such property.

The background and relationship of these functions to the basic doctrine of separation of powers under the Constitution have been fully explored in previous hearings held by this subcommittee, its parent committee, and other committees of the Congress. H.R. 111 would uphold these powers as the exclusive prerogative of the Congress by requiring appropriations for expenditures by the agency established to operate the canal, including payments to

Panama under the treaty, and by reiterating the constitutional requirement of congressional authorization for the disposal of property of the United States. H.R. 1716, on the other hand, contemplates payments to Panama without appropriations by the Congress, and transfer of extensive property of the United States to Panama without previous authorization by the Congress.

A second difference of major importance between the legislative plans incorporated in the two bills is the form of the agency that would be established by each. Article III of the treaty provides that the United States will carry out its responsibilities under the treaty, including operation of the canal, "by means of a U.S. Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America." The same article provides that upon entry into force of the treaty, the U.S. Government agency known as the Panama Canal Company, the agency that now operates the canal, shall cease to operate in the Republic of Panama.

The provisions of H.R. 1716 would respond to these provisions by changing the name of the Panama Canal Company to "Panama Canal Commission," and continuing the corporate entity with substantially the same autonomous powers as those of the present corporate agency. That agency, now called the Panama Canal Company, was originally established as a New York corporation, the stock of which was acquired by the United States, along with other assets of the French Canal Company, when the United States undertook construction of the canal. After its acquisition by the United States, the Panama Railroad Co. performed a number of important functions in the construction of the canal and operation of business activities in the Canal Zone useful to the operation of the canal. The canal itself, however, was operated from the time of construction to 1952 by a government agency called "The Panama Canal."

In 1948, the company was reincorporated as an agency of the United States under the Government Corporation Control Act, and the record shows that the reason for use of the corporate form was the wide diversity of business operations conducted by the company in the Canal Zone, where no private business operations were permitted under the terms of the treaty then in effect. These business operations were, of course, conducted by the corporation in support of the operation of the Panama Canal, but the canal continued to be operated by an ordinary, noncorporate government agency which paid all its revenues into the Treasury and made all expenditures pursuant to appropriations in the ordinary course.

In 1950, it was deemed to be appropriate to provide for operation of the waterway by the corporation, largely because of the advantages in the setting of tolls that were anticipated to result from this arrangement, and the name of the corporation was changed to Panama Canal Company.

Now, under the 1977 treaty, substantially all the collateral revenue-producing business activities of the corporation are to be transferred to Panama; private business is to be introduced into the area that had been the Canal Zone; and the sole remaining mission of the Panama Canal Commission is to be limited to the operation of the canal.

Despite the fact that the canal generates revenue, the purpose of the canal is not commercial but governmental, and the criteria that are used in the selection of the corporate form for a government agency conducting business operations, as such—electric power generation and distribution by TVA, to use an example—simply do not apply.

Accordingly, H.R. 111 provides that the Government agency established to operate the canal will take substantially the same form as that originally established by the Panama Canal Act of August 24, 1912, for operation of the canal, as continued by successive amendments and reenactments, until the transfer of the function to the Panama Railroad Co. under the circumstances I have just outlined.

The consequences of the selection of this type of agency are multifarious and will undoubtedly be explored at length in the hearings. In my view, one of the primary advantages of the form of agency that would be established by H.R. 111 is that of the requirement of much closer control of the operation of the canal by the Congress, with a provision for oversight responsibility by the Secretary of Defense.

Inasmuch as the form of agency is of basic importance to the method of operation and financial management of the canal in the years just ahead, I urge you to evaluate carefully and realistically the arguments advanced for and against selection of the corporate form for the agency. For example, one argument for the corporate form frequently heard is that business activities of the Government should be conducted by a Government corporation. Although this may be true in some instances, the generalization is far too broad to be accepted as a rule for universal application. As a matter of fact, a number of Government operations that resemble private business enterprises in one respect or another are conducted by noncorporate agencies. On the other hand, the financial and operational record of some Government agencies conducting business-like enterprises in corporate form leave a great deal to be desired.

A second consideration involved in the evaluation of this particular argument for the corporate form is whether the mission of the agency is, in fact, to carry on a business or to perform a governmental function. The Supreme Court has expressly held that the operation of the canal is a governmental exercise of the power of Congress to regulate commerce, rather than a proprietary or business activity of the Government.

Similarly, the argument that operation of the canal requires greater financial flexibility than would be available with a noncorporate agency should be carefully analyzed to identify the meaning of the term and the purposes to be accomplished by avoiding the inflexibility of limiting expenditures to amounts appropriated for the authorized programs of the agency.

In view of the complexity of the budgets for departments and agencies operated in noncorporate form with appropriated funds, a contention that the relatively simple operation of the canal, shorn of its commercial type activities, cannot be successfully operated with appropriated funds should be regarded with some skepticism. The record of operation of the canal by an appropriated fund

agency from the time of its completion until calendar year 1951 is persuasive evidence to the contrary.

Although there are major differences between H.R. 111 and H.R. 1716 other than those I have discussed above, most of those differences flow from the underlying disparity in approach in the two bills with regard to the extent and method of achieving congressional control over the operation of the canal during the remaining period of U.S. management.

Such differences between H.R. 111 and H.R. 1716 include, but are not limited to, the following:

One, provision in H.R. 111 for Senate confirmation of key officials and members of the various boards provided for by the treaty;

Two, provision in H.R. 111 for congressional participation in appointment of members of the consultative committee and for legislative veto of actions based on recommendations of the committee;

Three, provision in H.R. 111 that the canal will be operated under the direction of the Secretary of Defense, thereby consolidating executive branch authority and responsibility for operation and protection of the canal;

Four, continuation in H.R. 111 of a provision of law in effect since 1912 authorizing the President to subordinate canal operations to the Armed Forces of the United States in time of war or when war is imminent;

Five, inclusion in H.R. 111 of all identifiable elements of operating cost in the formula for tolls to be charged for use of the canal, thereby assuring operation of the canal on a truly self-sustaining basis. H.R. 1716 excludes significant costs from the tolls formula and includes other items of questionable validity;

Six, provision in H.R. 111 of detailed procedures based on the Administrative Procedures Act, for changing rates of tolls, including provision for judicial review;

Seven, withdrawal by H.R. 111 of consent to sue against the United States for vessel accidents outside the locks and restriction of administrative settlement of all claims to a maximum dollar liability.

All these provisions, as well as other differences between the two bills, are explained in detail in the section by section analysis accompanying the bill published in full on page H102 of the Congressional Record for January 15, 1979.

As difficult and complex as the legislative problems posed by these issues are, the time constraints imposed on the committee do not admit of any delay in reaching ultimate conclusions. As I have previously indicated, the new treaties enter into force on October 1, 1979. The reference of H.R. 1716 to this committee requires a report by the full committee not later than April 10 of this year. Fortunately, a great deal of preliminary preparation for the hearings has been completed, so that information previously developed has been organized and made available for use by the committee, and I have every confidence that the subcommittee, under the leadership of its distinguished Chairman, will discharge its responsibilities with dispatch and distinction and within the time available for completion of its work.

I thank the chairman and the subcommittee for its indulgence.

Mr. HUBBARD. Thank you, Mr. Chairman, for your statement, your information, and your helpfulness.

Chairman Murphy, my fellow committee members, distinguished witnesses and visitors, the hearings on implementing the Panama Canal Treaty are of double significance for me. And before I go further allow me to clarify an important matter. Many of you, as I, have referred to these as the Panama Canal Treaties—plural—for many months. The explanation as to why, at this time, we are referring only to the Panama Canal Treaty is because it is the Panama Canal Treaty, presently being weighed, which requires implementing legislation; the Neutrality Treaty entered into between our Government and Panama does not require implementing legislation. The Neutrality Treaty was the first one among the treaties approved, and it provides for the permanent neutrality of the canal beginning October 1, 1979, and, I repeat, it does not require implementing legislation. The Panama Canal Treaty, the one for which we are attempting to provide implementing legislation, goes into effect October 1, 1979, until December 31, 1999.

Now, as to why the implementation of this treaty is of double significance for me—it is my first experience in chairing a congressional subcommittee, and it brings to world attention, some of the most crucial hearings of this century on the continuing operation of the Panama Canal. Out of these hearings will arise many judgments of the subcommittee and full committee, including those dealing with the kind of agency that will run the canal for the next 20 years, the formula for toll assessment by users of the waterway, the control of the pursestrings and the personnel who will operate the canal.

As many of you know, along with many of my colleagues in the House, I personally oppose the new Panama Canal Treaty. At least 80 percent of my constituents oppose the Panama Canal Treaty. The sentiment in my own constituency in western Kentucky was very strong on the matter, and I agree with and represent that sentiment as their Member of Congress.

But, the question before us now is how to best protect the interests of the United States in light of a treaty arrangement, a treaty signed by the President of the United States, approved by two-thirds of the Senate; a treaty that has been ratified by the people of the United States and Panama.

I intend to approach these hearings with an open mind and with no particular presumption as to the final terms of the implementing legislation. Yes, I am a cosponsor of H.R. 111 with Chairman Murphy, but I am not wedded to any of its provisions which testimony may show to need improvement or change. The principle to which I will adhere is to support legislation that will best protect the interests of our Nation. This is our responsibility, and the Members of the House of Representatives and the people of this country are not going to accept anything less.

In order to protect U.S. interests, we must have a canal that works; we must have toll rates conducive to the use of the canal, and employees with needed skills and good morale. But the interests of Treasury and all the taxpayers of the United States are also at stake, and must be protected.

Many issues are involved in preparing the legislation sent to the Congress for implementation of the canal treaty. This subcommittee will try to focus upon all issues relevant to its jurisdiction. Due to time constraints, however, I believe we will have to aim at the biggest ones. I want to apologize, in advance, if we fail to explore a particular subject area with the thoroughness that I like to bring to all hearings.

There has been a good deal of work that has been done in preparation for these hearings. These hearings will extend over a period of weeks. Evidence of this is found in the substitute bill, H.R. 111; in the numerous studies that will be brought forward for closer examination during the course of these hearings; in the briefing books and analyses made available to each member of the committee prior to these hearings; in the side-by-side bill analysis that will soon be available to members.

The scope of the authority of Congress with respect to Panama Canal Treaty implementation appears to be relatively wide. It was the Department of State which, during the time of the treaty debates, characterized the scope of that authority. Accordingly, representatives of the State Department will be our first witnesses tomorrow. I feel sure we will get into the question of the interrelationship between the authority in the treaty and that to be derived from legislation.

Finally, I want to let all of you know how seriously I take this chairmanship to which the members of the Merchant Marine and Fisheries Committee have elected me. Even though I come from an inland State, I am very interested in the Panama Canal. There has always been an interest on the part of the people of Kentucky in the Panama Canal, more than I would have anticipated in fact. Some great Kentuckians have been associated with the canal. There was Maurice Thatcher, a member of the Isthmian Canal Commission, the civil governor of the Canal Zone from 1910 to 1913, and later a Member of Congress from Kentucky, for whom the bridge on the Pacific side of the canal has been named. Kentucky was the home of William Jennings Price, the U.S. Minister to Panama who co-authored the 1914 Boundary Convention. J. S. C. Blackburn of Versailles, Judge Bunk Gardner from my hometown of Mayfield, and, more recently, Judge Guthrie Crowe were a few other Kentuckians who have contributed. I understand that the Kentucky influence on the Canal Zone has been so marked that the civil and criminal law in the Canal Zone code have been influenced, indeed, by Kentucky law.

Having digressed slightly for that matter of State pride, I would now like to defer to the ranking minority member, my friend and our distinguished colleague, Congressman Bob Bauman of Maryland, for any statement he would like to make at this time.

Mr. BAUMAN. Mr. Chairman, my statement will be very brief. I am not at all pleased that we have to hold these hearings today, because I had hoped these treaties would have never actually been enacted by the Senate or ratified. But I am pleased to know that we will be holding full and extensive hearings on the subject of the Panama-Kentucky canal, as just described by my colleague. I would point out for the record that he neglected to mention our colleague

Mr. Snyder. He was another Kentuckian who had a great deal of influence—over the years on the course of events on this issue.

The coming days of hearings have been placed under an arbitrary deadline by the Speaker of the House which, I personally resent. We may want to consider requesting that the deadline be lifted if, indeed, our hearings produce results that may require more deliberation than the 60 days or so we are given. In any case I hope that during these hearings we will be given, for the first time, the full truth of exactly what these treaties mean, and particularly some of the deliberations that went into their writing.

Having stayed at the Holiday Inn in Panama City, I have always felt that this was not the most conducive atmosphere in which to write a document of this nature. Those of you who haven't been there, or may visit soon, will discover that this treaty was not only written under adverse conditions as far as the interests of the United States, but under a deadline. It was written with an ambassador's commission expiring, and it was, in many respects, what they call in rural areas of Maryland "a pig in a poke."

We have a very important responsibility, as I see it, because the treaty is full of loopholes, holes and various escape hatches. It is left to legislation to deal with some of the most important parts, as my colleague from New York, the distinguished chairman of our full committee, has carefully and articulately pointed out in his opening statement. The future governance of the canal to the end of this century is really left to the Congress of the United States because of the inability of the State Department to set down on paper terms that would both get by the Senate of the United States and the American people. So much was left for us to do, and we have to clean up the mess in these hearings and in this implementing legislation.

I hope that the net product will make certain that the chairmanship that you have just acquired will be important until the end of the century, and that this committee will have continuing and full jurisdiction as one of the congressional committees that will control the canal to the maximum extent possible under the treaties as ratified. I think it is also important that our hearings go in depth on the character of the current Government of Panama and subsequent statements that they have made after the ratification. I think that these points bear on their good faith and their reliability, which I hold in a minimum high regard, as we say in politics.

Last, I think it is important that we explore fully the economic structure that the treaty suggests. There are those of us in the east coast and the gulf ports who stand to be harmed substantially as far as employment and trade, a fact that was repeatedly denied by the State Department representatives. And I particularly want to clear up the question as to the disposition of the tolls, the claims that Panama may have upon the income, so that the maintenance and operation of the canal is continued. As one who has clamored up and down dredges and spent days traveling from one end to the other of the canal last January, I know how precariously balanced the economic operation of this entity is, and I take no comfort that it will continue in a healthy economic condition or be maintained as necessary if the treaty is not spelled out in great detail by our legislation.

Last, of course, we have not only the problem of the impact on shipping, but the strategic value of the canal for military purposes in the future, and that has to be addressed, and I think, to some degree, it is addressed in the substitute offered by the gentleman from New York which I have cosponsored.

So we have much to do in these hearings, and for those of us who opposed the canal treaties, and still oppose them, I suspect that we will use every opportunity we can, not to blindly vent our displeasure, because I think at this point that would be unproductive, but to make sure, as the chairman of our subcommittee just said, that the best interests of the American people—as betrayed as they have been already by this treaty—are at least salvaged for the duration that we maintain control. And I, too, want to add that it is an honor to serve as the ranking minority member of this subcommittee.

Mr. HUBBARD. Thank you, Congressman Bauman. Could you please inform me as to the full membership of the minority on this subcommittee?

Mr. BAUMAN. We have the gentleman from California, Mr. McCloskey, who is *ex officio*; he is not here today. Mr. Treen of Louisiana, who looks like he would like to make a statement.

Mr. TREEN. No.

Mr. BAUMAN. The gentleman from New York, Mr. Carney, who is a new member from Long Island, N.Y.; and the gentleman from California, Mr. Dornan, who is not here this morning.

Mr. HUBBARD. Let me ask if our colleague and friend, Congressman David Bonior of Michigan, on the Democratic side, would like to make a statement at this time.

Mr. BONIOR. Mr. Chairman, I don't have a statement, but I am curious if the other members have been appointed yet to the committee to fill the vacancies.

The CHAIRMAN. The other members will be appointed subject to the filling out of some vacancies on the other subcommittees. We still have the problem, of course, of the five-subcommittee rule that has limited selection of this subcommittee, and we have several members who will take a leave of absence from other subcommittees in order to serve on this subcommittee during consideration of legislation and then return to the other subcommittees. There was a change in two of those subcommittees since our organization meeting, and when those are resolved, the other members will join this subcommittee.

Mr. BONIOR. Does the chairman have any idea when you will know who the other members are?

The CHAIRMAN. Appointments will be made this week.

Mr. HUBBARD. As Congressman Bonior may know, Congressman Dingell of Michigan and Congressman Bowen of Mississippi are among the other Democratic members.

Mr. BONIOR. I trust we will have a very balanced and interesting committee session.

Mr. HUBBARD. Thank you, Congressman.

Before introducing our first distinguished witness, I ask unanimous consent that the bills to be considered in these hearings, and the agency reports on these bills, be inserted in the record at this point.

{The information follows:}

96TH CONGRESS
1ST SESSION

H. R. 111

To provide for the operation and maintenance of the Panama Canal and to provide for the exercise of the rights and performance of the duties of the United States provided in the Panama Canal Treaty of 1977.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. MURPHY of New York (for himself, Mr. DE LA GARZA, and Mr. HUBBARD) introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries, International Relations, the Judiciary, and Post Office and Civil Service

A BILL

To provide for the operation and maintenance of the Panama Canal and to provide for the exercise of the rights and performance of the duties of the United States provided in the Panama Canal Treaty of 1977.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 SECTION 1. SHORT TITLE.—This Act may be cited as
- 4 the “Panama Canal Act of 1979”.

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- 1 SEC. 2. PURPOSE OF ACT.—It is the purpose of this
- 2 Act to provide for the operation and maintenance of the

1 Panama Canal and to provide for the exercise of the rights
2 and performance of the duties of the United States set forth
3 in the Panama Canal Treaty between the United States of
4 America and the Republic of Panama signed on September 7,
5 1977 (hereinafter in this Act referred to as the "Panama
6 Canal Treaty of 1977") and the agreements relating to that
7 treaty signed on the same date (hereinafter in this Act re-
8 ferred to as the "related agreements").

9 SEC. 3. APPLICABLE LAWS.—(a) Except as otherwise
10 provided in this Act, the provisions of the Canal Zone Code
11 (and regulations issued pursuant to such Code), and other
12 laws applicable in the Canal Zone (and regulations issued
13 pursuant to such laws) before the date on which the Panama
14 Canal Treaty of 1977 enters into force, by virtue of the terri-
15 torial jurisdiction of the United States in the Canal Zone,
16 shall continue in force on or after such date only for the
17 purpose of the exercise of the authority vested in the United
18 States by such Treaty and related agreements.

19 (b) No provision of law or regulation referred to in sub-
20 section (a) shall be construed as regulating, or providing au-
21 thority to regulate, any matter as to which the United States
22 may not exercise jurisdiction under the Panama Canal agree-
23 ments.

24 (c)(1) Subject to the provisions of paragraph (2) of this
25 subsection, the following terms appearing in those laws and

1 regulations continued in effect by subsection (a) of this sec-
2 tion shall, in the application of such laws and regulations to
3 transactions, occurrences, or status on or after the effective
4 date of this Act, be deemed to refer to the following:

5 (A) "Canal Zone" shall be deemed to refer to
6 areas and installations in the Republic of Panama
7 made available to the United States pursuant to the
8 Panama Canal Treaty of 1977 and related agreements.

9 (B) "Canal Zone waters" and "waters of the
10 Canal Zone" shall be deemed to refer to "Panama
11 Canal waters" and "waters of the Panama Canal", re-
12 spectively.

13 (C) "Government of the Canal Zone" or "Canal
14 Zone Government", shall be deemed to refer to the
15 United States of America.

16 (D) "Governor of the Canal Zone" or "Gover-
17 nor", wherever the reference is to the Governor of the
18 Canal Zone, shall be deemed to refer to the Panama
19 Canal Commission.

20 (E) "Panama Canal Company" or "Company",
21 wherever the reference is to the Panama Canal Com-
22 pany, shall be deemed to refer to the Panama Canal
23 Commission.

24 (F) In chapter 57 of title 5 of the Canal Zone
25 Code, "hospitals" and "Health Bureau" shall be

1 deemed to refer, respectively, to the hospitals operated
2 by the United States in the Republic of Panama after
3 the effective date of this Act, and to the organizational
4 unit operating such hospitals.

5 (G) In chapter 57 of title 5 of the Canal Zone
6 Code, and in section 4784 of title 6 of such Code,
7 “health director” shall be deemed to refer to the senior
8 official in charge of the hospitals operated by the
9 United States in the Republic of Panama after the ef-
10 fective date of this Act.

11 (2) Any reference set forth in paragraph (1) of this sub-
12 section shall apply except as otherwise provided in this Act
13 or unless (A) such reference is inconsistent with the provi-
14 sions of this Act, (B) in the context in which a term is used
15 such reference is clearly not intended, or (C) a term refers to
16 a time before the effective date of this Act.

17 TITLE I—ADMINISTRATION AND REGULATIONS

18 PART 1—ADMINISTRATION

19 CHAPTER 1—PANAMA CANAL COMMISSION

20 SEC. 101. PANAMA CANAL COMMISSION.—There is
21 established as an agency and instrumentality of the United
22 States the Panama Canal Commission. The Commission
23 shall, under the general supervision of the Board established
24 by section 102 of this Act, and subject to the direction of the
25 Secretary of Defense, be responsible for the maintenance and

1 operation of the Panama Canal and the facilities and appurte-
2 nances related thereto.

3 SEC. 102. SUPERVISORY BOARD.—(a) The Panama
4 Canal Commission shall be supervised by a Board which
5 shall act under the direction of the Secretary of Defense. The
6 Board shall be composed of nine members, one of whom shall
7 be the Secretary of Defense or an officer of the Department
8 of Defense designated by the Secretary. Not less than five
9 members of the Board shall be nationals of the United States
10 and the remaining members shall be nationals of the Republic
11 of Panama. No member of the Board other than the Secre-
12 tary of Defense or his designee shall hold any other office in
13 or be employed by the Government of the United States or of
14 the Republic of Panama.

15 (b) The President shall appoint the members of the
16 Board, by and with the advice and consent of the Senate.
17 Each member of the Board so appointed shall hold office at
18 the pleasure of the President, and, before assuming the duties
19 of such office, shall take an oath faithfully to discharge the
20 duties of his office. Members of the Board shall serve without
21 compensation but shall be allowed travel expenses, including
22 per diem in lieu of subsistence, in accordance with section
23 107 of this Act.

24 (c) The Board shall hold meetings as provided in regula-
25 tions adopted by the Panama Canal Commission and ap-

1 proved by the Secretary of Defense. A quorum for the trans-
2 action of business shall consist of a majority of the Board
3 members of which a majority of those present are nationals of
4 the United States.

5 SEC. 103. ADMINISTRATOR.—(a) The Administrator of
6 the Panama Canal Commission shall be appointed by the
7 President, by and with the advice and consent of the Senate,
8 and shall hold office at the pleasure of the President.

9 (b) The Administrator shall be paid compensation at the
10 rate established for positions described in section 5316 of title
11 5 of the United States Code.

12 SEC. 104. DEPUTY ADMINISTRATOR AND CHIEF EN-
13 GINEER.—(a) There shall be a Deputy Administrator and a
14 Chief Engineer of the Panama Canal Commission, both of
15 whom shall be appointed by the President, by and with the
16 advice and consent of the Senate. The Deputy Administrator
17 and the Chief Engineer shall perform such duties as may be
18 prescribed by the President.

19 (b) The Deputy Administrator and the Chief Engineer
20 shall each be paid compensation at a rate of pay established
21 by the President which does not exceed the rate of basic pay
22 in effect for grade 18 of the General Schedule under section
23 5332 of title 5 of the United States Code.

24 SEC. 105. CONSULTATIVE COMMITTEE.—(a) There is
25 established a Panama Canal Consultative Committee to

1 advise the United States Government and the Government of
2 Panama on matters of policy affecting the operation of the
3 Panama Canal. The Consultative Committee shall be com-
4 posed of five representatives of the United States and five
5 representatives of the Republic of Panama.

6 (b) Members of the Committee representing the United
7 States shall be appointed as follows:

8 (1) Two members shall be appointed by the Presi-
9 dent pro tempore of the Senate.

10 (2) Two members shall be appointed by the
11 Speaker of the House of Representatives.

12 (3) One member shall be appointed by the Presi-
13 dent.

14 The two members of the Committee appointed by the Presi-
15 dent pro tempore of the Senate and by the Speaker of the
16 House of Representatives, respectively, shall not be members
17 of the same political party. Members of the Committee repre-
18 senting the Republic of Panama shall be appointed by the
19 President upon recommendations of the Government of
20 Panama. Members of the Committee shall serve at the pleas-
21 ure of the appointing officer. Members of the Committee shall
22 serve without compensation but shall be allowed travel ex-
23 penses, including per diem in lieu of subsistence, in accord-
24 ance with section 107 of this Act.

1 (c)(1) The Consultative Committee shall submit in writ-
2 ing to the President any action it proposes with respect to
3 any change in the maintenance, operation, or management of
4 the Panama Canal. The President shall transmit such pro-
5 posal, with his comments thereon, to each House of Con-
6 gress. Such proposal shall be delivered to the Secretary of
7 the Senate, if the Senate is not in session, and to the Clerk of
8 the House of Representatives, if the House is not in session.
9 Except as provided in paragraph (2) of this subsection, such
10 proposed action may not be taken if, within ninety calendar
11 days of continuous session of Congress after the date on
12 which the proposal is transmitted to the Congress, either
13 House of Congress adopts a resolution, the matter after the
14 resolving clause of which is as follows: "That the
15 disapproves the proposed action dealing with the matter of
16 which was transmitted to Congress on ",
17 the blank spaces therein being appropriately filled.

18 (2) If, at the end of sixty calendar days of continuous
19 session of Congress after the date the proposed action of the
20 Consultative Committee is transmitted to the Congress, no
21 committee of either House of Congress has reported or been
22 discharged from further consideration of a resolution disap-
23 proving the proposed action and neither House has adopted
24 such a resolution, the proposed action may be taken immedi-
25 ately.

1 (3) Congressional inaction on, or rejection of, a resolu-
2 tion of disapproval under this subsection shall not be deemed
3 an expression of approval of the proposed action.

4 (4) For purposes of this subsection—

5 (A) continuity of session shall be broken only by
6 an adjournment of Congress sine die; and

7 (B) the days on which either House is not in ses-
8 sion because of an adjournment of more than three
9 days to a day certain shall be excluded in the computa-
10 tion of the sixty and ninety calendar day periods.

11 SEC. 106. JOINT COMMISSION ON THE ENVIRON-
12 MENT.—(a) The President may establish a Joint Commission
13 on the Environment to be composed of not more than three
14 representatives of the United States and three representa-
15 tives of the Republic of Panama. The Joint Commission shall
16 periodically review the implementation of the Panama Canal
17 Treaty of 1977 with respect to its impact on the environ-
18 ment, and shall make recommendations to the United States
19 Government and the Government of Panama with respect to
20 ways to avoid or mitigate adverse environmental impacts re-
21 sulting from actions taken pursuant to such Treaty.

22 (b) Representatives of the United States on the Joint
23 Commission on the Environment shall be appointed by the
24 President, by and with the advice and consent of the Senate,
25 and shall serve at the pleasure of the President. Members of

1 the Commission shall serve without compensation but shall
2 be allowed travel expenses, including per diem in lieu of sub-
3 sistence, in accordance with section 107 of this Act.

4 SEC. 107. TRAVEL EXPENSES.—While away from
5 their homes, regular places of business, or official stations in
6 performance of services under this chapter, members of the
7 Supervisory Board, and the representatives of the United
8 States on the Panama Canal Consultative Committee and on
9 the Joint Commission on the Environment shall be allowed
10 travel expenses, including per diem in lieu of subsistence, in
11 the same manner as persons employed intermittently in Gov-
12 ernment service are allowed expenses under section 5703(b)
13 of title 5 of the United States Code.

14 SEC. 108. CONTROL BY ARMED FORCES IN TIME OF
15 WAR.—In time of war in which the United States is en-
16 gaged, or when, in the opinion of the President, war is immi-
17 nent, such officer of the Armed Forces as the President may
18 designate shall, upon the order of the President, assume and
19 have exclusive authority and jurisdiction over the operation
20 of the Panama Canal and all its adjuncts, appendants, and
21 appurtenances. During a continuation of this condition, the
22 Commission shall be subject to the order and direction of the
23 officer so designated, in all respects and particulars as to—
24 (1) the operation of the Canal; and

1 (2) all duties, matters, and transactions affecting
2 the areas and installations made available to the
3 United States by the Panama Canal Treaty of 1977
4 and related agreements.

5 SEC. 109. AUTHORITY OF THE AMBASSADOR.—(a)
6 The Ambassador of the United States to the Republic of
7 Panama shall coordinate with the Republic of Panama the
8 transfer to the Republic of Panama of those functions to be
9 assumed by the Republic of Panama pursuant to the Panama
10 Canal Treaty of 1977 and related agreements.

11 (b) The Panama Canal Commission shall not be subject
12 to the direction or supervision of the Ambassador of the
13 United States to the Republic of Panama, but the Commis-
14 sion shall keep the Ambassador fully and currently informed
15 with respect to all activities and operations of the officers and
16 employees of the Commission.

17 CHAPTER 3—EMPLOYEES

18 Subchapter I—Panama Canal Commission Personnel

19 SEC. 120. APPOINTMENT AND COMPENSATION;
20 DUTIES.—(a) Except as provided by sections 103 and 104 of
21 this Act, and in accordance with subchapter II of this
22 chapter—

23 (1) the Panama Canal Commission may appoint,
24 fix the compensation of, and define the authority and
25 duties of, officers, agents, attorneys, and employees

1 necessary for the management, operation, and maintenance of the Panama Canal and its complementary works, installations, equipment, and the conduct of operations incident thereto; and

5 (2) individuals so appointed shall be employed and shall serve under such conditions of employment, including matters relating to transportation, medical care, quarters, leave and computation thereof, and work hours, as shall be prescribed by the President.

10 (b) Officers and employees in other departments and agencies of the Government of the United States, including officers and other individuals in the Armed Forces, as defined in section 2101(2) of title 5, United States Code, may, if appointed under this section or under sections 103 or 104 of this Act, serve as officers or employees of the Commission.

16 SEC. 121. TRANSFER OF FEDERAL EMPLOYEES.—
17 The head of any department or agency of the Government of the United States, including the United States Postal Service, is authorized to enter into agreements for the transfer or detail to the Panama Canal Commission of any permanent employee of the agency. Under regulations which shall be prescribed by the Office of Personnel Management, any employee who is so transferred or so detailed shall, upon completion of his tour of duty with the Commission, be entitled to reemployment with the agency from which he was trans-

1 ferred or detailed without loss of pay, seniority, or other
2 rights or benefits to which he would have been entitled had
3 he not been so transferred or so detailed.

4 SEC. 122. COMPENSATION OF INDIVIDUALS IN THE
5 UNIFORMED SERVICES.—(a) If the individual appointed as
6 Administrator, Deputy Administrator, or Chief Engineer of
7 the Panama Canal Commission is in the uniformed services,
8 as defined in section 2101(3) of title 5, United States Code,
9 the amount of the official salary paid to him as an officer in
10 the uniformed services shall be deducted from the amount of
11 salary or compensation which is fixed by or pursuant to law
12 for those respective offices.

13 (b) Except as provided in subsection (a) of this section,
14 individuals appointed to or employed in positions in the
15 Panama Canal Commission who are under assignment for
16 those purposes by such a uniformed service shall not be paid
17 by the Panama Canal Commission any amount in excess of
18 their pay from the uniformed service for the period of that
19 service.

20 (c) The Panama Canal Commission shall annually pay
21 to such uniformed services amounts sufficient to reimburse
22 each of those services for the official salary paid to any indi-
23 vidual in their service for the period of appointment or em-
24 ployment by the Commission.

1 SEC. 123. DEDUCTION FROM COMPENSATION OF
2 AMOUNTS DUE FOR SUPPLIES OR SERVICES.—Amounts
3 due from officers and employees, whether to the Panama
4 Canal Commission or contractor, for transportation, board,
5 supplies, or any other service, may be deducted from the
6 compensation otherwise payable to them, and may be paid to
7 the authorized parties or credited to the appropriation out of
8 which the transportation, board, supplies, or other service
9 was originally paid.

10 SEC. 124. COST OF LIVING ALLOWANCE.—Each offi-
11 cer or employee of the Panama Canal Commission shall be
12 paid an allowance to offset the increased cost of living which
13 may result from the withdrawal of the eligibility of the officer
14 or employee and his dependents to use military postal serv-
15 ices, sales stores, and exchanges five years after the date on
16 which the Panama Canal Treaty of 1977 enters into force.
17 The amount of the allowance shall be determined by the
18 Commission.

19 SEC. 125. EDUCATIONAL TRAVEL BENEFITS.—The
20 Panama Canal Commission may provide by regulation for
21 roundtrip transportation between the Republic of Panama
22 and the United States for undergraduate college education in
23 the United States by dependents of employees of the Com-
24 mission who are citizens of the United States. The regula-
25 tions prescribed by the Commission under this section shall—

1 (1) provide eligibility requirements which must be
2 met by such dependents to qualify for transportation
3 under this section, including a requirement that all eli-
4 gible dependents must be under twenty-three years of
5 age; and

6 (2) limit the transportation provided to one round
7 trip during any one-year period.

8 SEC. 126. PRIVILEGES AND IMMUNITIES OF CERTAIN
9 EMPLOYEES.—The Secretary of Defense shall designate
10 those officers and employees of the Panama Canal Commis-
11 sion and other individuals entitled to the privileges and im-
12 munities accorded under paragraph (3) of article VIII of the
13 Panama Canal Treaty of 1977. The Department of State
14 shall furnish the Republic of Panama a list of the names of
15 such officers, employees, and other individuals and shall
16 notify the Republic of Panama of any subsequent additions to
17 or deletions from the list.

18 SEC. 127. INAPPLICABILITY OF CERTAIN BENEFITS
19 TO CERTAIN NONCITIZENS.—(a) Chapter 81 of title 5,
20 United States Code, relating to compensation for work inju-
21 ries, chapter 83 of such title, relating to civil service retire-
22 ment, chapter 87 of such title, relating to life insurance, and
23 chapter 89 of such title, relating to health insurance, are in-
24 applicable to individuals who are not citizens of the United
25 States, who are hired by the Panama Canal Commission

1 after the effective date of this Act, and who are covered by
2 the Social Security System of the Republic of Panama pursu-
3 ant to the Panama Canal Treaty of 1977 and related agree-
4 ments.

5 (b) Section 8701(a)(B) of title 5, United States Code, is
6 amended to read as follows:

7 “(B) an employee who is not a citizen or national
8 of the United States and whose permanent duty station
9 is outside the United States, unless such individual was
10 an employee for the purpose of this chapter on the day
11 before the effective date of the Panama Canal Act of
12 1979 by virtue of service with a Federal agency in the
13 Canal Zone.”.

14 (c) Section 8901(1)(ii) of title 5, United States Code, is
15 amended to read as follows:

16 “(ii) an employee who is not a citizen or na-
17 tional of the United States and whose permanent
18 duty station is outside the United States, unless
19 such individual was an employee for the purpose
20 of this chapter on the day before the effective date
21 of the Panama Canal Act of 1979 by virtue of
22 service with a Federal agency in the Canal
23 Zone.”.

1 Subchapter II—Wage and Employment Practices

2 SEC. 141. DEFINITIONS.—As used in this sub-
3 chapter—

4 (1) “department” means—

5 (A) the Panama Canal Commission; and

6 (B) an executive agency (as defined in sec-
7 tion 105 of title 5, United States Code) which
8 makes an election under section 142(b) of this
9 Act;

10 (2) “position” means those duties and responsibil-
11 ities of a civilian nature under the jurisdiction of a de-
12 partment which are performed in the Republic of
13 Panama;

14 (3) “employee” means an individual holding a po-
15 sition; and

16 (4) “continental United States” means the several
17 States of the United States of America and the District
18 of Columbia.

19 SEC. 142. APPLICABILITY OF THE PANAMA CANAL
20 EMPLOYMENT SYSTEM.—(a) The Panama Canal Commis-
21 sion shall conduct its wage and employment practices in ac-
22 cordance with—

23 (1) the principles established in the Panama Canal
24 Treaty of 1977 and related agreements and the provi-
25 sions of this chapter and other applicable law; and

1 (2) the Panama Canal Employment System and
2 the regulations promulgated by, and under the authori-
3 ty of, the President in accordance with this chapter.

4 (b) The head of an executive agency other than the
5 Panama Canal Commission may elect in whole or in part to
6 have the Panama Canal Employment System made applica-
7 ble to personnel of his agency in the Republic of Panama.

8 (c) To the extent he deems appropriate, the President
9 may—

10 (1) exclude any employee or position from this
11 subchapter or from any provision of this subchapter;
12 and

13 (2) extend to any employee, whether or not the
14 employee is a citizen of the United States, the same
15 rights and privileges as are provided by applicable laws
16 and regulations for citizens of the United States em-
17 ployed in the competitive civil service of the Govern-
18 ment of the United States.

19 SEC. 143. EMPLOYMENT STANDARDS.—The head of
20 each department shall establish written standards for—

21 (1) the determination of the qualifications and fit-
22 ness of employees and of individuals under considera-
23 tion for appointment to positions; and

24 (2) selection of individuals for appointment, pro-
25 motion, or transfer to positions.

1 The standards shall conform to the provisions of this sub-
2 chapter, the regulations referred to in section 155(a) of this
3 Act, and the Panama Canal Employment System.

4 SEC. 144. INTERIM APPLICATION OF CANAL ZONE
5 MERIT SYSTEM.—Notwithstanding any other provision of
6 this chapter, the provisions of subchapter III of chapter 7 of
7 title 2 of the Canal Zone Code establishing the Canal Zone
8 Merit System together with the regulations prescribed there-
9 under shall continue in effect until such time as the Panama
10 Canal Employment System is established pursuant to section
11 149 of this Act.

12 SEC. 145. COMPENSATION.—(a) The head of each de-
13 partment, in accordance with this subchapter, shall establish,
14 and from time to time may revise, the rates of basic compen-
15 sation for positions and employees under his jurisdiction.

16 (b) The rates of basic compensation may be established
17 and revised in relation to the rates of compensation for the
18 same or similar work performed in the continental United
19 States or in such areas outside the continental United States
20 as may be designated in the regulations referred to in section
21 155 of this Act.

22 (c) The head of each department may grant increases in
23 rates of basic compensation in amounts not to exceed the
24 amounts of the increases granted, from time to time, by or
25 under statute in corresponding rates of compensation in the

1 appropriate schedule or scale of pay. The head of the depart-
2 ment concerned may make the increases effective as of such
3 date as he designates but not earlier than the effective date of
4 the corresponding increases provided by or under the statute.

5 SEC. 146. UNIFORM APPLICATION OF STANDARDS
6 AND RATES.—The established employment standards and
7 rates of basic compensation established pursuant to sections
8 143 and 145 of this title shall be applied uniformly, irrespec-
9 tive of whether the employee or individual concerned is a
10 citizen of the United States or a citizen of the Republic of
11 Panama.

12 SEC. 147. RECRUITMENT AND RETENTION REMU-
13 NERATION.—(a) In addition to basic compensation, addition-
14 al compensation may be paid, in such amounts as the head of
15 the department concerned determines, as an overseas recruit-
16 ment or retention differential to any individual who—

17 (1) was employed before the effective date of this
18 Act by the Panama Canal Company, the Canal Zone
19 Government, or any department in the Canal Zone;

20 (2) is an employee who was recruited outside of
21 the Republic of Panama for placement in his position;
22 or

23 (3) is a medical doctor employed by the Depart-
24 ment of Defense or the Panama Canal Commission if,
25 in the judgment of the head of the department con-

1 cerned, the recruitment and retention of the medical
2 doctor is essential.

3 (b) Any employee described in more than one paragraph
4 of subsection (a) of this section may qualify for a recruitment
5 or retention differential under only one of such paragraphs.

6 (c) Additional compensation provided under this section
7 may not exceed 25 per centum of the rate of basic compensa-
8 tion for the same or similar work performed in the continen-
9 tal United States by individuals employed by the Government
10 of the United States.

11 (d)(1) Section 5921 of title 5, United States Code, is
12 amended—

13 (A) in paragraph (3), by striking out “President;”
14 and inserting in lieu thereof “President, but does not
15 include an employee assigned to work in the Republic
16 of Panama for the Panama Canal Commission or an
17 executive agency which makes an election under sec-
18 tion 142(b) of the Panama Canal Act of 1979;” and

19 (B) in paragraph (6), by striking out “the Canal
20 Zone.”

21 (2) Section 5925 of title 5, United States Code, is
22 amended by inserting “to an employee” after “granted” the
23 first place it appears.

24 SEC. 148. BENEFITS BASED ON COMPENSATION.—
25 For the purpose of determining—

1 (1) amounts of compensation for disability or
2 death under chapter 81 of title 5, United States Code,
3 relating to compensation for work injuries;

4 (2) benefits under subchapter III of chapter 83 of
5 title 5, United States Code, relating to civil service re-
6 tirement;

7 (3) amounts of insurance under chapter 87 of title
8 5, United States Code, relating to life insurance;

9 (4) amounts of overtime pay or other premium
10 compensation;

11 (5) annual leave benefits; and

12 (6) any other benefits related to basic compensa-
13 tion;

14 the basic compensation of each employee who is a citizen of
15 the United States shall include the rate of basic compensation
16 established for his position plus the amount of any increase in
17 basic compensation or allowance provided under section 145
18 or 147 of this Act.

19 SEC. 149. MERIT AND OTHER EMPLOYMENT RE-
20 QUIREMENTS.—(a) Subject to this subchapter, and taking
21 into account any recommendation of the Panama Canal Com-
22 mission, the President—

23 (1) shall establish the Panama Canal Employment
24 System; and

1 (2) may, from time to time, amend or modify the
2 provisions of the System, including provisions relating
3 to selection for appointment, reappointment, reinstatement,
4 reemployment, and retention, with respect to positions,
5 employees, and individuals under consideration
6 for appointment to positions.

7 (b) The Panama Canal Employment System shall—

8 (1) be subject to and as limited by the Panama
9 Canal Treaty of 1977 and related agreements, be
10 based on the merit of the employee or individual and
11 upon his qualifications and fitness to hold the position
12 concerned;

13 (2) conform generally to policies, principles, and
14 standards for the competitive service (as defined in section
15 2101 of title 5, United States Code); and

16 (3) include provision for appropriate interchange
17 between the Panama Canal Employment System and
18 such competitive service.

19 SEC. 150. SALARY PROTECTION UPON CONVERSION
20 OF COMPENSATION BASE.—Whenever the rate of basic
21 compensation of an employee heretofore or hereafter established
22 in relation to rates of compensation for the same or
23 similar work in the continental United States is converted
24 under authority of section 145 of this Act to a rate of basic
25 compensation established in relation to rates in areas other

1 than the continental United States in the manner provided by
2 section 145(b) of this Act, he shall, pending transfer to a
3 position for which the rate of basic compensation is estab-
4 lished in relation to rates of compensation in the continental
5 United States in the manner provided by section 145(b) of
6 this Act, and as long as he remains in the same position or in
7 a position of equal or higher grade, continue to receive a rate
8 of basic compensation not less than that to which he was
9 entitled immediately prior to the conversion.

10 SEC. 151. REVIEW AND ADJUSTMENT OF CLASSIFICA-
11 TIONS, GRADES, AND PAY LEVEL.—An employee may re-
12 quest at any time that the department in which he is em-
13 ployed—

14 (1) review the classification of his position or the
15 grade or pay level for his position, or both; and

16 (2) revise or adjust such classification, grade or
17 pay level, or both, as the case may be.

18 The request for review and revision or adjustment shall be
19 submitted and adjudicated in accordance with the regularly
20 established appeals procedure of the department.

21 SEC. 152. SAME; PANAMA CANAL BOARD OF AP-
22 PEALS; DUTIES.—(a) There shall be, in conformity with this
23 subchapter, and as prescribed by regulation promulgated by
24 the President or his designee, a Panama Canal Board of Ap-
25 peals. The regulations shall provide for, in accordance with

1 this subchapter, the number of members of the Board and
2 their appointment, compensation, and terms of office, the se-
3 lection of a Chairman of the Board, the appointment and
4 compensation of the Board's employees, and other appropri-
5 ate matters relating to the Board.

6 (b) The Board shall review and determine the appeals of
7 employees in accordance with section 153 of this Act. The
8 decisions of the Board shall conform to the provisions of this
9 subchapter.

10 SEC. 153. SAME; APPEALS TO BOARD; PROCEDURE;
11 FINALITY OF DECISIONS.—(a) An employee may appeal to
12 the Panama Canal Board of Appeals from an adverse deter-
13 mination made under section 151 of this Act. The appeal
14 shall be made in writing within a reasonable time, as pre-
15 scribed in regulations prescribed by, or under the authority
16 of, the President, after the date of the transmittal by the
17 department to the employee of written notice of the adverse
18 determination.

19 (b) The Board may authorize, in connection with an
20 appeal pursuant to subsection (a) of this section, a personal
21 appearance before the Board by the employee, or by his rep-
22 resentative designated for the purpose.

23 (c) After investigation and consideration of the evidence
24 submitted, the Board shall—

25 (1) prepare a written decision on the appeal;

1 (2) transmit its decision to the department con-
2 cerned; and

3 (3) transmit copies of the decision to the employee
4 concerned or to his designated representative.

5 (d) The decision of the Board on any question or other
6 matter relating to an appeal is final and conclusive. The de-
7 partment concerned shall take action in accordance with the
8 decision of the Board.

9 SEC. 155. ADMINISTRATION BY THE PRESIDENT.—(a)
10 The President shall prescribe regulations necessary and ap-
11 propriate to carry out the provisions of this subchapter and,
12 in the case of any executive agency which makes an election
13 under section 142(b) of this Act, coordinate the policies and
14 activities under this subchapter of the agency.

15 (b) The President may establish an office within the
16 Panama Canal Commission as the successor to the Canal
17 Zone Central Examining Office. The purpose of the office
18 shall be to assist the President in—

19 (1) carrying out his coordination responsibility
20 under subsection (a) of this section; and

21 (2) implementing the provisions of the Panama
22 Canal Treaty of 1977 and related agreements with re-
23 spect to recruitment, examination, determination of
24 qualification standards, and similar matters.

1 (c) The President may delegate any authority vested in
2 him by this subchapter.

3 SEC. 156. APPLICABILITY OF OTHER LAWS.—This
4 subchapter does not affect the applicability of—

5 (1) the provisions of sections 1302, 2108, 3305,
6 3306, 3309–3319, 3351, 3363, 3501–3504, 7511,
7 7512, and 7701 of title 5, United States Code, relating
8 to preference eligibles, with respect to individuals who
9 were preference eligibles on the date of the enactment
10 of this Act;

11 (2) section 7501 of title 5, United States Code,
12 relating to removal or suspension from the competitive
13 service, with respect to individuals who were in the
14 competitive service on the date of the enactment of
15 this Act; and

16 (3) subsection (a) of section 5544 of title 5, United
17 States Code, relating to wage-board rates and over-
18 time, with respect to individuals who were subject to
19 such subsection on the date of the enactment of this
20 Act.

21 Subchapter III—Conditions of Employment and Placement

22 SEC. 202. TRANSFERRED EMPLOYEES.—(a)(1) With
23 respect to employees of the Panama Canal Company or the
24 Canal Zone Government who are transferred to employment
25 in the Republic of Panama with the Panama Canal Commis-

1 sion or any other agency of the Government of the United
2 States, the terms and conditions of employment set forth in
3 paragraph (2) of this subsection shall be generally no less
4 favorable, on or after the date of the exchange of the instru-
5 ments of ratification of the Panama Canal Treaty of 1977,
6 than the terms and conditions of employment with the
7 Panama Canal Company and Canal Zone Government imme-
8 diately before such date.

9 (2) The terms and conditions of employment referred to
10 in paragraph (1) of this section are the following:

- 11 (A) wage rates;
- 12 (B) tropical differential;
- 13 (C) premium pay and night differential;
- 14 (D) reinstatement and restoration rights;
- 15 (E) injury and death compensation benefits;
- 16 (F) leave and travel, except as modified to provide
17 equity with other employees within the agency to
18 which the employee is transferred;
- 19 (G) transportation and repatriation benefits;
- 20 (H) group health and life insurance;
- 21 (I) reduction in force rights;
- 22 (J) an employee grievance system, and the right
23 to appeal adverse and disciplinary actions and position
24 classification actions;
- 25 (K) veterans' preference eligibility;

1 (L) holidays;

2 (M) saved pay provisions; and

3 (N) severance pay benefits.

4 (3) The provisions of this subsection shall take effect on
5 the date of the enactment of this Act.

6 (b)(1) Section 5(c) of the Defense Department Overseas
7 Teachers Pay and Personnel Practices Act (20 U.S.C.
8 903(c)) is amended by adding at the end thereof the following
9 new sentence: "This section does not apply with respect to
10 teachers who were employed by the Canal Zone Government
11 school system immediately before the effective date of the
12 Panama Canal Act of 1979 and who were transferred to a
13 teaching position."

14 (2) Section 6(a) of such Act (20 U.S.C. 904(a)) is
15 amended by adding at the end thereof the following: "This
16 section does not apply with respect to teachers who were
17 employed by the Canal Zone Government school system im-
18 mediately before the effective date of the Panama Canal Act
19 of 1979 and who were transferred to a teaching position."

20 (c) Sections 5595(a)(2)(iii), 5724a(a) (3) and (4), and
21 8102(b) of title 5, United States Code, are each amended by
22 striking out "Canal Zone" each place it appears and insert-
23 ing in lieu thereof the following: "areas in the Republic of
24 Panama used or regulated by the United States pursuant to
25 the Panama Canal Treaty of 1977 and related agreements".

1 SEC. 203. PLACEMENT.—(a) A citizen of the United
2 States—

3 (1) who, immediately before the date of the ex-
4 change of the instruments of ratification of the Panama
5 Canal Treaty of 1977, was an employee of the
6 Panama Canal Company or the Canal Zone Govern-
7 ment;

8 (2) who separates or is scheduled to separate on
9 or after such date during the life of the Panama Canal
10 Treaty of 1977 for any reason other than misconduct
11 or delinquency; and

12 (3) who is not placed in another appropriate posi-
13 tion in the Government of the United States in the Re-
14 public of Panama;

15 shall, upon the employee's request, be accorded appropriate
16 placement to vacancies with the United States Government
17 in the United States.

18 (b) A citizen of the United States—

19 (1) who, immediately before the date of the ex-
20 change of the instruments of ratification of the Panama
21 Canal Treaty of 1977, was an employee of an agency
22 of the Government of the United States in the Canal
23 Zone other than the Panama Canal Company or the
24 Canal Zone Government;

1 (2) whose position is eliminated as the result of
2 implementing the Panama Canal Treaty of 1977; and

3 (3) who is not appointed to another appropriate
4 position in the Government of the United States in the
5 Republic of Panama;

6 shall, upon the employee's request, be accorded the place-
7 ment assistance provided in subsection (a) of this section.

8 (c) The Office of Personnel Management shall establish
9 and administer a Federal Government-wide placement pro-
10 gram for all eligible employees who request appointment to
11 positions under this subsection.

12 (d) The provisions of this section shall take effect on the
13 date of the enactment of this Act.

14 Subchapter IV—Retirement

15 SEC. 205. EARLY RETIREMENT ELIGIBILITY.—(a)
16 Section 8336 of title 5, United States Code, is amended—

17 (1) by redesignating subsection (c) as subsection
18 (c)(1); and

19 (2) by adding at the end of subsection (c) the fol-
20 lowing new paragraph:

21 “(2) A law enforcement officer or firefighter employed
22 by the Panama Canal Company or the Canal Zone Govern-
23 ment immediately before the date of the exchange of the in-
24 struments of ratification or entry into force of the Panama
25 Canal Treaty of 1977, who—

1 “(A) is separated from the service before January
2 1, 2000, and, upon separation, meets the age and serv-
3 ice requirements specified in paragraph (1) of this sub-
4 section; or

5 “(B) is separated not more than two years before
6 the date on which he would meet such age and service
7 requirements but for such separation;
8 is entitled to an annuity.”.

9 (b) Section 8336 of title 5, United States Code, is fur-
10 ther amended—

11 (1) by redesignating subsection (h) as subsection
12 (k); and

13 (2) inserting after subsection (g) the following new
14 subsections:

15 “(h)(1) An employee of the Panama Canal Commission
16 or of an executive agency conducting operations in the Canal
17 Zone or the Republic of Panama to whom this subsection
18 applies and who is separated from the service before January
19 1, 2000—

20 “(A) involuntarily, as a result of the implementa-
21 tion of the Panama Canal Treaty of 1977, except by
22 removal for cause on charges of misconduct or delin-
23 quency, after completing twenty years of service;

1 “(B) voluntarily, after completing twenty-five
2 years of service or after becoming age fifty and com-
3 pleting twenty years of service; or

4 “(C) involuntarily, as a result of the implementa-
5 tion of the Panama Canal Treaty of 1977, except by
6 removal for cause on charges of misconduct or delin-
7 quency, or voluntarily, not more than two years before
8 he would have met the age and service requirements
9 specified in subparagraph (B) of this paragraph;
10 is entitled to an annuity.

11 “(2) This subsection applies to an employee only if the
12 employee—

13 “(A) was employed by the Canal Zone Govern-
14 ment or the Panama Canal Company immediately
15 before the date of the exchange of the instruments of
16 ratification or entry into force of the Panama Canal
17 Treaty of 1977; and

18 “(B) has been employed without a break in serv-
19 ice since the date of the exchange of the instruments of
20 ratification of the Panama Canal Treaty of 1977 or its
21 entry into force by the Panama Canal Commission or
22 by an executive agency conducting operations in the
23 Canal Zone or the Republic of Panama.

24 “(i)(1) An employee of the Panama Canal Commission
25 or of an executive agency conducting operations in the Canal

1 Zone or the Republic of Panama, to whom this subsection
2 applies and who is involuntarily separated from the service
3 before January 1, 2000, except by removal for cause on
4 charges of misconduct or delinquency, as a result of the im-
5 plementation of the Panama Canal Treaty of 1977—

6 “(A) after completing twenty years of service; or

7 “(B) not more than two years before the employ-
8 ee would have met the age and service requirements
9 specified in subparagraph (B) of subsection (h)(1) of this
10 section but for such separation;

11 is entitled to an annuity.

12 “(2) This subsection applies to an employee only if the
13 employee—

14 “(A) was employed in the Canal Zone by an ex-
15 ecutive agency other than the Panama Canal Company
16 or the Canal Zone Government immediately before the
17 date of the exchange of the instruments of ratification,
18 or the entry into force, of the Panama Canal Treaty of
19 1977; and

20 “(B) has been employed without a break in serv-
21 ice since the date of the exchange of the instruments of
22 ratification of the Panama Canal Treaty of 1977 or its
23 entry into force by the Panama Canal Commission or
24 by an executive agency conducting operations in the
25 Canal Zone or the Republic of Panama.

1 “(j) For the purpose of subsections (h) and (i) of this
2 section, ‘executive agency’ includes the Administrative Office
3 of the United States Courts and the Smithsonian Institu-
4 tion.”.

5 SEC. 206. EARLY RETIREMENT COMPUTATION.—Sec-
6 tion 8339 of title 5, United States Code, is amended:

7 (1) in subsection (f), by inserting after “subsec-
8 tions (a)–(e)” the following: “and (n)”;

9 (2) in subsection (i), by inserting after “subsec-
10 tions (a)–(h)” the following: “and (n)”;

11 (3) in subsections (j) and (k)(1), by inserting after
12 “subsections (a)–(i)”, each time it appears, the follow-
13 ing: “and (n)”;

14 (4) in subsection (l), by inserting after “subsec-
15 tions (a)–(k)” the following: “and (n)”;

16 (5) in subsection (m), by inserting after “subsec-
17 tions (a)–(e)” the following: “and (n)”;

18 (6) by adding at the end thereof the following new
19 subsections:

20 “(n) The annuity of an employee retiring under this sub-
21 chapter who was employed by the Panama Canal Company
22 or the Canal Zone Government immediately before the date
23 on which the Panama Canal Treaty of 1977 enters into force
24 and who transfers without a break in service to a position in
25 the Panama Canal Commission or in another executive

1 agency in the Republic of Panama, is computed, with respect
2 to the period of that service performed after the entry into
3 force of the Panama Canal Treaty of 1977 and before any
4 break in such service, by adding—

5 “(1) the product of multiplying $2\frac{1}{2}$ percent of the
6 employee’s average pay by so much of such service as
7 does not exceed twenty years; plus

8 “(2) the product of multiplying 2 percent of the
9 employee’s average pay by so much of such service as
10 exceeds twenty years.

11 “(o) The annuity computed under subsection (n) of this
12 section for an employee who was employed as a law enforce-
13 ment officer or firefighter shall be increased by \$8 for each
14 full calendar month of such service in the Republic of
15 Panama after the entry into force of the Panama Canal
16 Treaty of 1977 and before the completion by the employee of
17 twenty years of service as a law enforcement officer or fire-
18 fighter.

19 “(p) The annuity computed under this subchapter for an
20 employee who—

21 “(1) served as a law enforcement officer or fire-
22 fighter in the Panama Canal Company or the Canal
23 Zone Government immediately before the date of the
24 exchange of the instruments of ratification or entry into
25 force of the Panama Canal Treaty of 1977; and

1 “(2) does not qualify for retirement under section
2 8336(c) of this title;
3 shall be increased by \$12 for each full calendar month of such
4 service before the entry into force of the Panama Canal
5 Treaty of 1977 and before the completion by the employee of
6 twenty years of service as a law enforcement officer or fire-
7 fighter.”.

8 SEC. 207. NONCITIZEN RETIREMENT; TRANSFER TO
9 SOCIAL SECURITY SYSTEM OF THE REPUBLIC OF
10 PANAMA.—(a)(1) Subject to subsection (b) of this section,
11 and under such regulations as the President may prescribe,
12 the Secretary of the Treasury shall pay, to such extent or in
13 such amounts as may be provided in advance in appropriation
14 Acts, to the Social Security System of the Republic of
15 Panama, out of funds deposited in the Treasury of the United
16 States to the credit of the Civil Service Retirement Fund
17 under section 8334(a)(2) of title 5, United States Code, such
18 sums of money as may be necessary to aid in the purchase of
19 a retirement equity in such System for each individual, with
20 respect to whom this subsection applies, who—

21 (A) is separated from employment in the Panama
22 Canal Company, the Canal Zone Government, or the
23 Panama Canal Commission by reason of the implemen-
24 tation of the Panama Canal Treaty of 1977 and relat-
25 ed agreements; and

1 (B) becomes employed under the Social Security
2 System of the Republic of Panama through the transfer
3 of a function or activity to the Republic of Panama
4 from the United States or through a job placement as-
5 sistance program.

6 (2) This subsection applies with respect to any individu-
7 al only if the individual—

8 (A) has been credited with at least five years of
9 Federal service under the United States Civil Service
10 Retirement System;

11 (B) is not eligible for an immediate retirement an-
12 nuity, and does not elect a deferred annuity under the
13 United States Civil Service Retirement System; and

14 (C) elects to withdraw the entire amount of his
15 contributions to the United States Civil Service Retire-
16 ment System and to transfer such amount to the Social
17 Security System of the Republic of Panama pursuant
18 to the special regime referred to in paragraph (3) of ar-
19 ticle VIII of the Agreement in Implementation of Arti-
20 cle III of the Panama Canal Treaty of 1977.

21 (b) The amount paid to the Social Security System of
22 the Republic of Panama with respect to any individual under
23 subsection (a) of this section shall not exceed the entire
24 amount of the individual's contribution withdrawn from the
25 United States Civil Service Retirement Fund.

1 (c)(1) Pursuant to paragraph 2(b) of Annex C to the
2 Agreement in Implementation of Article IV of the Panama
3 Canal Treaty of 1977, the President, or his designee, may
4 pay to the Republic of Panama, in accordance with such reg-
5 ulations as the President or his designee may prescribe, and
6 to such extent or in such amounts as may be provided in
7 advance in appropriations Acts, amounts necessary to pur-
8 chase, or to supplement the purchase of, a retirement equity
9 in the Social Security System of the Republic of Panama for
10 the benefit of each employee of the United States Forces in
11 the Republic of Panama—

12 (A) who is not a citizen of the United States;

13 (B) who was employed on or before the date on
14 which the Panama Canal Treaty of 1977 enters into
15 force in an agency or instrumentality of the Govern-
16 ment of the United States in the Republic of Panama
17 (including, with respect to employment before such
18 date, the area formerly known as the Canal Zone);

19 (C) who, for any period of such employee's serv-
20 ice in such agency or instrumentality before the date
21 on which the Panama Canal Treaty of 1977 enters
22 into force, was not covered, by reason of such service,
23 by the United States Civil Service Retirement System
24 or any other Federal retirement system providing bene-

1 fits similar to those retirement benefits provided by the
2 Social Security System of the Republic of Panama; and

3 (D) whose period of service referred to in subpar-
4 agraph (C) of this paragraph was of such a nature that
5 such employee would have been covered at that time
6 by the Social Security System of the Republic of
7 Panama had such law been applicable.

8 (2) The retirement equity referred to in paragraph (1) of
9 this subsection with respect to any employee will cover retro-
10 actively, from the date on which the Panama Canal Treaty of
11 1977 enters into force, all periods of service by such em-
12 ployee in agencies and instrumentalities of the Government
13 of the United States in the Republic of Panama (including the
14 area known before such date as the Canal Zone) during
15 which such employee was not covered by the United States
16 Civil Service Retirement System or any other Federal retire-
17 ment system providing benefits similar to those retirement
18 benefits provided by the Social Security System of the Re-
19 public of Panama and during which such employee's service
20 was of such a nature that the employee would have been
21 covered by the Social Security System of the Republic of
22 Panama had such law been applicable.

23 SEC. 208. CASH RELIEF TO CERTAIN FORMER EM-
24 PLOYEES.—(a) The Panama Canal Commission, under the
25 regulations prescribed by the President pursuant to the Act

1 entitled "An Act authorizing cash relief for certain employ-
2 ees of the Panama Canal not coming within the provisions of
3 the Canal Zone Retirement Act", approved July 8, 1937, as
4 amended (50 Stat. 478; 68 Stat. 17), may continue the pay-
5 ments of cash relief to those individual former employees of
6 the Canal Zone Government or Panama Canal Company or
7 their predecessor agencies not coming within the scope of the
8 former Canal Zone Retirement Act whose services were ter-
9 minated prior to October 5, 1958, because of unfitness for
10 further useful service by reason of mental or physical disabil-
11 ity resulting from age or disease. Subject to subsection (b) of
12 this section, such cash relief may not exceed \$1.50 per month
13 for each year of service of the employees so furnished relief,
14 with a maximum of \$45 per month, plus the amount of any
15 cost-of-living increases in such cash relief granted before the
16 effective date of this Act pursuant to section 181 of the Canal
17 Zone Code (as in effect immediately before the effective date
18 of this Act), nor be paid to any employee who, at the time of
19 termination for disability prior to October 5, 1958, had less
20 than ten years' service with the Canal Zone Government, the
21 Panama Canal Company, or their predecessor agencies on
22 the Isthmus of Panama.

23 (b) An additional amount of \$20 per month shall be paid
24 to each person who receives payment of cash relief under

1 subsection (a) of this section and shall be allowed without
2 regard to the limitations contained therein.

3 (c) Each cash relief payment made pursuant to this sec-
4 tion shall be increased on the same effective date and by the
5 same per centum, adjusted to the nearest dollar, as civil serv-
6 ice retirement annuities are increased under the cost-of-living
7 adjustment provisions of section 8340(b) of title 5, United
8 States Code. Such increase shall apply only to cash relief
9 payments made after the date of the enactment of this Act as
10 increased by annuity increases made after such date of enact-
11 ment under section 8340(b) of title 5, United States Code.

12 (d) The Panama Canal Commission may pay cash relief
13 to the widow of any former employee of the Canal Zone
14 Government or the Panama Canal Company who, until the
15 time of his death, receives or has received cash relief under
16 subsection (a) of this section, under section 181 of the Canal
17 Zone Code (as in effect immediately before the effective date
18 of this Act), or under the Act of July 8, 1937, referred to in
19 subsection (a) of this section. The term "widow" as used in
20 this section includes only the following:

21 (1) a woman legally married to such employee at
22 the time of his termination for disability and at his
23 death;

24 (2) a woman who, although not legally married to
25 such former employee at the time of his termination,

1 had resided continuously with him for at least five
2 years immediately preceding the employee's termina-
3 tion under such circumstances as would at common
4 law make the relationship a valid marriage and who
5 continued to reside with him until his death; and

6 (3) a woman who has not remarried or assumed a
7 common-law relationship with any other person.

8 Cash relief granted to such a widow shall not at any time
9 exceed 50 per centum of the rate at which cash relief, inclu-
10 sive of any additional payment under subsection (b) of this
11 section, would be payable to the former employee were he
12 then alive.

13 (e) Subchapter III of chapter 83 of title 5, United States
14 Code, applies with respect to those individuals who were in
15 the service of the Canal Zone Government or the Panama
16 Canal Company on October 5, 1958, and who, except for the
17 operation of section 13(a)(1) of the Act entitled "An Act to
18 implement item 1 of a Memorandum of Understandings at-
19 tached to the treaty of January 25, 1955, entered into by the
20 Government of the United States of America and the Gov-
21 ernment of the Republic of Panama with respect to wage and
22 employment practices of the Government of the United
23 States of America in the Canal Zone", approved July 25,
24 1958 (72 Stat. 405), would have been within the classes of

1 individuals subject to the Act of July 8, 1937, referred to in
2 subsection (a) of this section.

3 SEC. 209. APPLIANCES FOR EMPLOYEES INJURED
4 BEFORE SEPTEMBER 7, 1916.—Artificial limbs or other ap-
5 pliances for persons who were injured in the service of the
6 Isthmian Canal Commission or of the Panama Canal before
7 September 7, 1916, may be purchased by the Panama Canal
8 Commission out of any funds appropriated to the Commis-
9 sion.

10 Subchapter V—Leave

11 SEC. 211. LEAVE FOR JURY OR WITNESS SERVICE.—
12 Section 6322(a) of title 5, United States Code, is amended—

13 (1) by striking out “the Canal Zone, or”; and

14 (2) by striking out “Islands.” and inserting in lieu
15 thereof “Islands, or the Republic of Panama.”.

16 Subchapter VI—Application to Related Personnel

17 SEC. 220. LAW ENFORCEMENT, CANAL ZONE CIVIL-
18 IAN PERSONNEL POLICY COORDINATING BOARD, AND RE-
19 LATED EMPLOYEES.—(a) For the purposes of sections 125,
20 202, 203, 205, and 206 of this Act, including any amend-
21 ment made by such sections, the United States attorney for
22 the District of the Canal Zone and the Assistant United
23 States attorneys and their clerical assistants, and the United
24 States marshal for the District of the Canal Zone and his

1 deputies and clerical assistants shall be considered employees
2 of the Panama Canal Commission.

3 (b) For the purposes of this Act, including any amend-
4 ment made by this Act, the Executive Director of the Canal
5 Zone Civilian Personnel Policy Coordinating Board, the
6 Manager, Central Examining Office, and their staffs shall be
7 considered, to have been employees of the Panama Canal
8 Company with respect to service in such positions before the
9 date on which the Panama Canal Treaty of 1977 enters into
10 force and as employees of the Panama Canal Commission
11 with respect to service in such positions on or after such
12 date.

13 Subchapter VII—Labor-Management Relations

14 SEC. 225. LABOR-MANAGEMENT RELATIONS.—The
15 provisions of chapter 71 of title 5, United States Code, shall
16 not apply with respect to employees of the agencies or instru-
17 mentalities of the Government of the United States whose
18 posts of duty are located in the area comprising the Canal
19 Zone immediately before the date on which the Panama
20 Canal Treaty of 1977 enters into force, which area is within
21 the land and water areas the use of which is made available
22 to the United States pursuant to such treaty. In lieu of such
23 provisions, the Secretary of Defense shall prescribe regula-
24 tions which shall provide, equally for all such employees, for
25 collective bargaining between employee representatives and

1 management officials in such agencies or instrumentalities.
2 Such regulations shall incorporate the provisions of sections
3 7102, 7106, 7116, 7120, and 7131 of such title 5. Such
4 regulations shall include such provisions as are necessary,
5 and shall be administered, so that such employees shall have
6 the right to bargain collectively under the same conditions
7 and with respect to the same subject matter as are applicable
8 with respect to such right in connection with the civil service
9 within the continental United States.

10 CHAPTER 5—FUNDS AND ACCOUNTS

11 Subchapter I—Funds

12 SEC. 231. CANAL ZONE GOVERNMENT FUNDS.—On
13 the effective date of this Act, any unexpended balances of the
14 appropriation accounts appearing on the books of the Gov-
15 ernment as “Operating Expenses, Canal Zone Government
16 (38-0116-0-1-806)” and “Capital Outlay, Canal Zone Gov-
17 ernment (38-0118-0-1-806)” shall be covered into the gener-
18 al fund of the Treasury, and any appropriations to which ex-
19 penditures under such accounts have been chargeable before
20 such effective date are repealed. The Panama Canal Com-
21 mission may, to such extent or in such amounts as are pro-
22 vided in appropriation Acts to the Commission for such pur-
23 pose, pay claims or make payments chargeable to such ac-
24 counts, upon proper audit of such claims or payments. There
25 are authorized to be appropriated to the Panama Canal Com-

1 mission such funds as may be necessary to pay claims and
2 make payments pursuant to this section.

3 SEC. 232. PANAMA CANAL COMPANY FUNDS.—(a) On
4 the effective date of this Act, the account appearing on the
5 books of the Government as the “Panama Canal Company
6 Fund” (38-4060-0-3-403) shall be terminated, and any unex-
7 pended balances under such accounts as of that date shall be
8 covered into the general fund of the Treasury.

9 (b) On or after the effective date of this Act, tolls for the
10 use of the Panama Canal and all other receipts of the
11 Panama Canal Commission that, before such effective date,
12 would have been credited to the accounts appearing on the
13 books of the Government as the “Panama Canal Company
14 Fund” (38-4060-0-3-403) shall be deposited in the Treasury
15 as miscellaneous receipts.

16 (c) No funds may be appropriated to or for the use of the
17 Panama Canal Commission, nor may any funds be obligated
18 or expended by the Commission for any fiscal year, unless
19 such appropriation, obligation, or expenditure has been spe-
20 cifically authorized by law.

21 (d) The Panama Canal Commission may, to such extent
22 or in such amounts as are provided in advance in appropri-
23 ation Acts, enter into contracts in order to carry out its func-
24 tions.

1 SEC. 233. EMERGENCY FUND.—(a) On the effective
2 date of this Act, the Secretary of the Treasury shall establish
3 and thereafter shall maintain in the Treasury a fund to be
4 known as the “Panama Canal Emergency Fund”. There are
5 authorized to be appropriated, for deposit in such Fund (1) for
6 the fiscal year beginning on October 1, 1979, \$10,000,000,
7 and (2) for any fiscal year beginning on or after October 1,
8 1980, such additional sums as may be necessary.

9 (b) The Panama Canal Commission may make with-
10 draws from the fund by check in order to defray emergency
11 expenses and to insure continuous operation of the Panama
12 Canal, if funds appropriated for the operation and mainte-
13 nance of the Canal are insufficient for such purposes. Any
14 withdrawal from the fund or expenditure made under this
15 subsection shall be reported forthwith by the Commission to
16 the Congress and to the Office of Management and Budget.

17 Subchapter II—Accounting Policies and Audits

18 SEC. 234. ACCOUNTING POLICIES.—The Panama
19 Canal Commission shall establish and maintain its accounts
20 pursuant to the Accounting and Auditing Act of 1950 (31
21 U.S.C. 65 et seq.) and the provisions of this chapter. Such
22 accounts shall specify all revenues received by the Commis-
23 sion, including tolls for the use of the Canal, and all expenses
24 of maintenance and operation of the Panama Canal and of its
25 complementary works, installations and equipment, including

1 depreciation, amortization of the right to use assets made
2 available to the United States under the Panama Canal
3 Treaty of 1979, payments to Panama under the Panama
4 Canal Treaty of 1977, expenditures for capital plant replace-
5 ment, expansion and improvement, and interest on the in-
6 vestment of the United States as shown in the accounts of
7 the Panama Canal Company at the close of business on the
8 day before the effective date of this Act, and as increased by
9 the amount of additional appropriations, and reduced by the
10 amount of payments into the Treasury, which are made with
11 respect to such investment.

12 SEC. 235. REPORTS.—The Commission shall, not later
13 than January 31 of each year, submit to the President and
14 the Congress, a financial statement and a complete report
15 with respect to the maintenance and operation of the Panama
16 Canal during the preceding fiscal year.

17 SEC. 236. AUDIT BY GENERAL ACCOUNTING
18 OFFICE.—(a) Financial transactions of the Panama Canal
19 Commission shall be audited by the General Accounting
20 Office pursuant to the Accounting and Auditing Act of 1950.
21 In conducting any audit pursuant to such Act, the appropri-
22 ate representatives of the General Accounting Office shall
23 have access to all books, accounts, financial records, reports,
24 files, and other papers, items, or property in use by the Com-
25 mission and necessary to facilitate such audit, and such rep-

1 representatives shall be afforded full facilities for verifying trans-
2 actions with the balances or securities held by depositories,
3 fiscal agents, and custodians. An audit pursuant to such Act
4 shall first be conducted with respect to the fiscal year in
5 which this Act becomes effective.

6 (b) The Comptroller General shall, not later than six
7 months after the end of each fiscal year, submit to the Con-
8 gress a report of the audit conducted by the Comptroller
9 General with respect to such fiscal year. Such report shall
10 set forth the scope of the audit and shall include a statement
11 of assets and liabilities, capital and surplus or deficit, based
12 on the accounts of the Commission established pursuant to
13 this chapter; a statement of income and expense; a statement
14 of sources and application of funds; and such comments and
15 information as the Comptroller General considers necessary
16 to keep the Congress informed of the operations and financial
17 transactions of the Commission, together with such recom-
18 mendations with respect to such operations and transactions
19 as the Comptroller General considers advisable. The report
20 shall identify specifically any program, expenditure, or other
21 financial transaction or undertaking observed in the course of
22 the audit which, in the opinion of the Comptroller General,
23 has been carried out or made and has not been authorized by
24 law. The Comptroller General shall submit a copy of each

1 such report to the President, to the Secretary of the Treas-
2 ury, and to the Commission.

3 Subchapter III—Interagency Accounts

4 SEC. 240. INTERAGENCY SERVICES; REIMBURSE-
5 MENTS.—(a) The Panama Canal Commission shall reimburse
6 the Civil Service Retirement Fund for Government contribu-
7 tions to the retirement fund applicable to the Commission's
8 employees, and the Employees' Compensation Fund, Bureau
9 of Employee's Compensation, Department of Labor, for the
10 benefit payments to the Commission's employees, and shall
11 also reimburse other Government agencies for payments of a
12 similar nature made on its behalf.

13 (b) The Department of Defense shall reimburse the
14 Panama Canal Commission for amounts expended by the
15 Commission in maintaining defense facilities in standby con-
16 dition for the Department of Defense.

17 (c) Notwithstanding any other provision of law, appro-
18 priations (for any fiscal year beginning after September 30,
19 1979) of the Department of Defense, or such other agency or
20 agencies as may be designated for this purpose by the Presi-
21 dent, shall be made available for conducting the educational
22 and health care activities, including kindergartens and col-
23 lege, carried out by the Canal Zone Government and
24 Panama Canal Company before the effective date of this Act,
25 and for providing the services related thereto to the catego-

1 ries of persons to which such services were provided before
2 such effective date. Amounts so expended by an agency for
3 furnishing services to an employee of any other agency and
4 the dependents of such employee (less amounts payable by
5 such employee) shall be fully reimbursable to the agency fur-
6 nishing the services from appropriations of the agency bear-
7 ing the cost of the compensation of the employee concerned.

8 (d) Mail addressed to the Canal Zone from or through
9 the continental United States may be routed by the United
10 States Postal Service to the military post offices of the
11 United States Forces in the Republic of Panama. Such mili-
12 tary post offices shall provide the required directory services
13 and shall accept such mail to the extent permitted under the
14 Panama Canal Treaty of 1977 and related agreements. The
15 Panama Canal Commission may furnish personnel, records,
16 and other services to the military post offices whenever ap-
17 propriate to assure the proper distribution, rerouting, or
18 return of such mail.

19 Subchapter IV—Postal Accounts

20 SEC. 241. TERMINATION OF POSTAL SERVICE; DISPO-
21 SITION OF FUNDS.—(a) The postal service of the Canal Zone
22 maintained and operated pursuant to chapter 73 of title 2 of
23 the Canal Zone Code, as in effect immediately before the
24 effective date of this Act, is terminated, and all funds of the

1 postal service of the Canal Zone shall be covered into the
2 United States Treasury as miscellaneous receipts.

3 (b) Securities of the United States acquired by invest-
4 ment of funds of the Canal Zone postal service under chapter
5 73 of title 2 of the Canal Zone Code, as in effect immediately
6 before the effective date of this Act, shall be redeemed by the
7 Secretary of the Treasury and the face amount thereof, with
8 any accrued interest, shall be paid into the general fund of
9 the United States Treasury.

10 SEC. 242. POSTAL SAVINGS CERTIFICATES.—(a) In-
11 terest on postal savings certificates issued before the effective
12 date of this Act under chapter 73 of title 2 of the Canal Zone
13 Code, as in effect immediately before the effective date of this
14 Act, and interest on deposit money orders issued in lieu of
15 such certificates before such effective date, shall cease to
16 accrue on the anniversary dates of the respective certificates
17 occurring in the twelve-month period beginning on the effec-
18 tive date of this Act.

19 (b) In the settlement and payment of any postal savings
20 account under this subchapter, including all interest accrued
21 thereon, which is maintained in the name of a deceased, pre-
22 sumed dead, or incompetent depositor, or which is deter-
23 mined to be payable to—

24 (1) a minor;

1 (2) a person adjudicated mentally incompetent or
2 under other legal disability; or

3 (3) the estate of a person who is deceased or pre-
4 sumed dead,

5 the payment of such account, or any appropriate share there-
6 of, may be made to a legal representative of the depositor, or
7 to a legal representative of the person or property of a claim-
8 ant described in paragraph (1), (2), or (3). If there are no
9 outstanding guardianship or administration proceedings con-
10 cerning the person or estate of the depositor, or the person or
11 estate of such claimant, payment shall be made to the person
12 who is otherwise qualified to receive payment according to
13 the laws of descent and distribution in effect in the Canal
14 Zone immediately before the date on which the Panama
15 Canal Treaty of 1977 enters into force. Payment made under
16 this subsection shall be a bar to recovery by any other claim-
17 ant of amounts so paid.

18 SEC. 243. SETTLEMENT OF POSTAL ACCOUNTS.—(a)
19 During the fiscal year beginning on the effective date of this
20 Act, the Panama Canal Commission shall, to the extent prac-
21 ticable, settle and pay the accounts, discharge the obliga-
22 tions, and otherwise conclude the affairs of the Canal Zone
23 postal service terminated by section 241(a) of this Act.

1 (b) Obligations of the postal service referred to in sub-
2 section (a) may be paid from any funds appropriated to the
3 Commission.

4 SEC. 244. MONEY ORDERS UNPAID AFTER TWENTY
5 YEARS.—Money orders issued by the Canal Zone postal
6 service may not be paid after twenty years from the last day
7 of the month of original issue. Claims for unpaid money
8 orders are forever barred unless received by the Panama
9 Canal Commission within the twenty-year period.

10 Subchapter V—Accounts with Republic of Panama

11 SEC. 250. PAYMENTS TO PANAMA.—(a) The Panama
12 Canal Commission shall pay to the Republic of Panama those
13 payments required under paragraph 5 of Article III and
14 paragraph 4 of Article XIII of the Panama Canal Treaty of
15 1977. Such payments shall be made from appropriations for
16 such purpose.

17 (b) In determining whether operating revenues exceed
18 expenditures for the purpose of payments to Panama under
19 paragraph 4(c) of such Article XIII, such operating revenues
20 in a fiscal period shall be reduced by (1) all expenditures of
21 such period as shown by the accounts established pursuant to
22 section 234 of this Act and (2) the accumulative sum from
23 prior years (beginning with the year in which the Panama
24 Canal Treaty of 1977 enters into force) of any excess of ex-
25 penditures of the Commission over operating revenues.

1 SEC. 251. TRANSACTIONS WITH REPUBLIC OF
2 PANAMA.—The Panama Canal Commission may, on a reim-
3 bursable basis, provide to the Republic of Panama materials,
4 supplies, equipment, work, or services, including water and
5 electric power, requested by the Republic of Panama, at such
6 rates as may be agreed upon by the Commission and the
7 Republic of Panama. Payment for such materials, supplies,
8 equipment, work, or services may be made by direct payment
9 by the Republic of Panama to the Panama Canal Commis-
10 sion or by offset against amounts due the Republic of
11 Panama by the United States.

12 SEC. 252. DISASTER RELIEF.—If an emergency arises
13 because of disaster or calamity by flood, hurricane, earth-
14 quake, fire, pestilence, or like cause, not foreseen or other-
15 wise provided for, and occurring in the Republic of Panama
16 in such circumstances as to constitute an actual or potential
17 hazard to health, safety, security, or property in the areas
18 and installations made available to the United States pursu-
19 ant to the Panama Canal Treaty of 1977 and related agree-
20 ments, the Panama Canal Commission may expend available
21 funds appropriated to the Commission, and utilize or furnish
22 materials, supplies, equipment, and services for relief, assist-
23 ance, and protection.

1 CHAPTER 7—CLAIMS FOR INJURIES TO PERSONS OR
2 PROPERTY

3 Subchapter I—General Provisions

4 SEC. 271. SETTLEMENT OF CLAIMS GENERALLY.—(a)

5 Subject to the provisions of this chapter, the Panama Canal
6 Commission may adjust and pay claims for injury to, or loss
7 of, property or for personal injury or death, arising from the
8 operation of the Panama Canal or related facilities and ap-
9 purtenances.

(b) No claim for an amount exceeding \$60,000 shall be adjusted and paid by the Commission under the provisions of this chapter.

(c) An award made to a claimant under this section shall be payable out of any moneys appropriated for or made available to the Commission. The acceptance by the claimant of the award shall be final and conclusive on the claimant, and shall constitute a complete release by the claimant of his claim against the United States and against any employee of the United States acting in the course of his employment who is involved in the matter giving rise to the claim.

(d) Except as provided in section 296 of this Act, no action for damages on claims cognizable under this chapter shall lie against the United States or the Commission, and no such action shall lie against any officer or employee of the United States. Neither this section nor section 296 shall pre-

1 clude actions against officers or employees of the United
2 States for injuries resulting from their acts outside the scope
3 of their employment or not in the line of their duties, or from
4 their acts committed with the intent to injure the person or
5 property of another.

6 (e) The provisions of section 1346(b) of title 28, United
7 States Code, and the provisions of chapter 171 of such title
8 shall not apply to claims cognizable under this chapter.

9 Subchapter II—Vessel Damage

10 SEC. 291. INJURIES IN LOCKS OF CANAL.—The
11 Panama Canal Commission shall promptly adjust and pay
12 damages for injuries to vessels, or to the cargo, crew or pas-
13 sengers of vessels, which may arise by reason of their pas-
14 sage through the locks of the Panama Canal under the con-
15 trol of officers or employees of the United States. Damages
16 may not be paid where the injury was proximately caused by
17 the negligence or fault of the vessel, master, crew, or passen-
18 gers. If the negligence or fault of the vessel, master, crew, or
19 passengers proximately contributed to the injury, the award
20 of damages shall be diminished in proportion to the negli-
21 gence or fault attributable to the vessel, master, crew, or
22 passengers. Damages may not be allowed and paid for inju-
23 ries to any protrusion beyond any portion of the hull of a
24 vessel, whether it is permanent or temporary in character. A
25 vessel is considered to be passing through the locks of the

1 Canal, under the control of officers or employees of the
2 United States, from the time the first towing line is made fast
3 on board before entrance into the locks and until the towing
4 lines are cast off upon, or immediately prior to, departure
5 from the lock chamber.

6 SEC. 292. INJURIES OUTSIDE LOCKS.—The Panama
7 Canal Commission shall promptly adjust and pay damages
8 for injuries to vessels, or to the cargo, crew, or passengers of
9 vessels which may arise by reason of their presence in the
10 Canal, or waters adjacent thereto, other than the locks, when
11 the injury was proximately caused by negligence or fault on
12 the part of an officer or employee of the United States acting
13 within the scope of his employment and in the line of his
14 duties in connection with the operation of the Canal, and
15 when the amount of the claim does not exceed \$60,000. If
16 the negligence or fault of the vessel, master, crew, or passen-
17 gers proximately contributed to the injury, the award of dam-
18 ages shall be diminished in proportion to the negligence or
19 fault attributable to the vessel, master, crew, or passengers.
20 In the case of a vessel which is required by or pursuant to
21 regulations prescribed pursuant to section 1331 of this Act to
22 have a Panama Canal pilot on duty aboard, damages may not
23 be adjusted and paid for injuries to the vessel, or its cargo,
24 crew, or passengers, incurred while the vessel was under
25 way and in motion, unless at the time the injuries were in-

1 curred the navigation or movement of the vessel was under
2 the control of a Panama Canal pilot.

3 SEC. 293. MEASURE OF DAMAGES GENERALLY.—In
4 determining the amount of the award of damages for injuries
5 to a vessel for which the Panama Canal Commission is deter-
6 mined to be liable, there may be included—

7 (1) actual or estimated cost of repairs;

8 (2) charter hire actually lost by the owners, or
9 charter hire actually paid, depending upon the terms of
10 the charter party, for the time the vessel is undergoing
11 repairs;

12 (3) maintenance of the vessel and wages of the
13 crew, if they are found to be actual additional expenses
14 or losses incurred outside of the charter hire; and

15 (4) other expenses which are definitely and accu-
16 rately shown to have been incurred necessarily and by
17 reason of the accident or injuries.

18 Agent's fees, or commissions, or other incidental expenses of
19 similar character, or any items which are indefinite, indeter-
20 minable, speculative, or conjectural may not be allowed. The
21 Panama Canal Commission shall be furnished such vouchers,
22 receipts, or other evidence as may be necessary in support of
23 any item of a claim. If a vessel is not operated under charter
24 but by the owner directly, evidence shall be secured if availa-
25 ble as to the sum for which vessels of the same size and class

1 can be chartered in the market. If the charter value cannot
2 be determined, the value of the vessel to its owners in the
3 business in which it was engaged at the time of the injuries
4 shall be used as a basis for estimating the damages for the
5 vessel's detention; and the books of the owners showing the
6 vessel's earnings about the time of the accident or injuries
7 shall be considered as evidence of probable earnings during
8 the time of detention. If the books are unavailable, such other
9 evidence shall be furnished as may be necessary.

10 SEC. 294. DELAYS FOR WHICH NO RESPONSIBILITY
11 IS ASSUMED.—The Panama Canal Commission is not re-
12 sponsible, and may not consider any claim, for demurrage or
13 delays caused by—

- 14 (1) landslides or other natural causes;
- 15 (2) necessary construction or maintenance work
16 on Canal locks, terminals, or equipment;
- 17 (3) obstruction arising from accidents;
- 18 (4) time necessary for admeasurement;
- 19 (5) congestion of traffic;
- 20 (6) time necessary for investigation of marine ac-
21 cidents; or
- 22 (7) except as specially set forth in this subchapter,
23 any other cause.

24 SEC. 295. SETTLEMENT OF CLAIMS.—(a) Subject to
25 subsection (b) of this section, the Panama Canal Commission,

1 by mutual agreement, compromise, or otherwise, may adjust
2 and determine the amounts of the respective awards of dam-
3 ages pursuant to this subchapter. Such amounts shall be pay-
4 able promptly out of any moneys appropriated or allotted for
5 the maintenance and operation of the Panama Canal. Accept-
6 ance by a claimant of the amount awarded to him shall be
7 deemed to be in full settlement of such claim against the
8 Government of the United States.

9 (b) The Panama Canal Commission shall not adjust and
10 pay any claim for damages for injuries arising by reason of
11 the presence of the vessel in the Panama Canal or adjacent
12 waters outside the locks where the amount of the claim ex-
13 ceeds \$60,000, but shall submit the claim to the Congress by
14 a special report containing the material facts and the recom-
15 mendation by the Commission thereon.

16 SEC. 296. ACTIONS ON CLAIMS.—A claimant for dam-
17 ages pursuant to section 291 of this Act who considers him-
18 self aggrieved by the findings, determination, or award of the
19 Panama Canal Commission in reference to his claim may
20 bring an action on the claim against the Commission in the
21 United States District Court for the Eastern District of Lou-
22 isiana. Subject to the provisions of this chapter and of appli-
23 cable regulations issued pursuant to section 1331 of this Act
24 relative to navigation of the canal and adjacent waters, such
25 actions shall proceed and be heard by the court without a

1 jury according to the principles of law and rules of practice
2 obtaining generally in like cases between private parties and
3 other agencies of the United States Government. Any judg-
4 ment obtained against the Panama Canal Commission in an
5 action under this chapter shall be paid out of any moneys
6 appropriated or allotted for the maintenance and operation of
7 the Panama Canal. An action for damages cognizable under
8 this section shall not lie against the United States or the
9 Commission, otherwise, nor in any other court, than as pro-
10 vided in this section; nor may it lie against any officer or
11 employee of the United States or of the Commission.

12 SEC. 297. INVESTIGATION OF ACCIDENT OR INJURY
13 GIVING RISE TO CLAIM.—Notwithstanding any other law, a
14 claim may not be considered under this subchapter, or an
15 action for damages lie thereon, unless, prior to the departure
16 from the Canal of the vessel involved—

17 (1) the investigation by the competent authorities
18 of the accident or injury giving rise to the claim has
19 been completed; and

20 (2) the basis for the claim has been laid before the
21 Panama Canal Commission.

22 SEC. 298. BOARD OF LOCAL INSPECTORS.—(a) The
23 President shall provide for the establishment of a Board of
24 Local Inspectors of the Panama Canal Commission which

1 shall perform, in accordance with regulations prescribed by
2 the President—

3 (1) the investigations required by section 297 of
4 this Act; and

5 (2) such other duties with respect to marine mat-
6 ters as may be assigned by the President.

7 (b) In conducting any investigation pursuant to subsec-
8 tion (a) of this section, the Board of Local Inspectors may
9 summon witnesses, administer oaths, and require the produc-
10 tion of books and papers necessary for such investigation.

11 CHAPTER 9—PUBLIC PROPERTY

12 SEC. 371. ASSETS AND LIABILITIES OF PANAMA
13 CANAL COMPANY.—All property and other assets of the
14 Panama Canal Company shall revert to the United States on
15 the effective date of this Act, and, except as otherwise pro-
16 vided by law, the United States shall assume the liabilities of
17 the Panama Canal Company then outstanding. The Commis-
18 sion may use such property, facilities, and records of the
19 Panama Canal Company as is necessary to carry out its
20 functions.

21 SEC. 372. TRANSFERS AND CROSS-SERVICING BE-
22 TWEEN AGENCIES.—(a) In the interest of economy and
23 maximum efficiency in the utilization of Government proper-
24 ty and facilities, there are authorized to be transferred be-
25 tween departments and agencies of the United States, with

1 or without reimbursement, such facilities, buildings, struc-
2 tures, improvements, stock, and equipment located in the Re-
3 public of Panama, and used for their activities therein, as
4 may be mutually agreed upon by the departments and agen-
5 cies involved and approved by the President of the United
6 States or his designee.

7 (b) The Panama Canal Commission may enter into
8 cross-servicing agreements with any other agency of the
9 United States for the use of facilities, furnishing of services,
10 or performance of functions.

11 (c) The Panama Canal Commission, any other agency
12 or department of the United States, and any United States
13 court in the Republic of Panama may transfer any of the
14 records (or copies thereof) of the Commission, or of such
15 agency, department, or court, as the case may be, including
16 records acquired from the Canal Zone Government or the
17 Panama Canal Company (including vital statistics records) to
18 any other agency or department of the United States or to
19 any other court of the United States and, in coordination
20 with the Ambassador and with his approval, to the Govern-
21 ment of the Republic of Panama.

22 (d) The provisions of this section shall apply to the
23 Smithsonian Institution.

24 SEC. 373. DISPOSITION OF PROPERTY OF THE
25 UNITED STATES.—No property of the United States located

1 in the Republic of Panama may be disposed of except pursu-
2 ant to law enacted by the Congress.

3 SEC. 374. TRANSFER OF PROPERTY TO PANAMA.—

4 On the date on which the Panama Canal Treaty of 1977
5 enters into force, the Secretary of State may convey to the
6 Republic of Panama the Panama Railroad and such property
7 located in the area comprising the Canal Zone immediately
8 before such date, which area is not within the land and water
9 areas the use of which is made available to the United States
10 pursuant to such treaty. Property transferred pursuant to this
11 section may not include buildings and other facilities, except
12 housing, located outside such areas, the use of which is re-
13 tained by the United States pursuant to the Panama Canal
14 Treaty of 1977 and related agreements.

15 CHAPTER 11—TOLLS FOR USE OF CANAL

16 SEC. 411. PRESCRIPTION OF MEASUREMENT RULES
17 AND RATES OF TOLLS.—(a) The President is authorized,
18 subject to the provisions of this chapter, to prescribe and
19 from time to time change—

20 (1) the rules for the measurement of vessels for
21 the Panama Canal; and

22 (2) the tolls that shall be levied for the use of the
23 Canal.

1 (b) Such rules of measurement and tolls prevailing on
2 the effective date of this Act shall continue in effect until
3 changed as provided in this chapter.

4 SEC. 412. BASES OF TOLLS.—(a) Toll on merchant
5 vessels, army and navy transports, colliers, tankers, hospital
6 ships, supply ships, and yachts shall be based on net vessel
7 tons of one hundred cubic feet each of actual earning capacity
8 determined in accordance with the rules for the measurement
9 of vessels for the Panama Canal, and tolls on other floating
10 craft shall be based on displacement tonnage. The tolls on
11 vessels in ballast without passengers or cargo may be less
12 than the tolls for vessels with passengers or cargo.

13 (b) Toll shall be prescribed at rates calculated to cover
14 as nearly as practicable all costs of maintaining and operating
15 the Panama Canal, together with the facilities and appurte-
16 nances related thereto, including interest, depreciation, amor-
17 tization of the investment of the United States in the Canal,
18 payments to Panama pursuant to paragraph 5 of Article III
19 and paragraphs 4 (a) and (b) of Article XIII of the Panama
20 Canal Treaty of 1977, and requirements for plant replace-
21 ment, expansion, and improvements.

22 (c) The President of the United States may require ves-
23 sels operated by the United States, including warships, naval
24 tenders, colliers, tankers, transports, hospital ships, and other
25 vessels owned or chartered by the United States for trans-

1 porting troops or supplies, and ocean-going training ships
2 owned by the United States and operated by State nautical
3 schools, to pay tolls. If, however, they are not required to
4 pay tolls, the tolls thereon shall nevertheless be computed
5 and the amounts thereof shall be treated as revenues of the
6 Panama Canal for the purpose of prescribing the rates of tolls
7 and computing the amount of the payment to the Republic of
8 Panama pursuant to paragraph 4(a) of Article XIII of the
9 Panama Canal Treaty of 1977 and section 250 of this Act.

10 (d) The levy of tolls is subject to the provisions of sec-
11 tion 1 of article III of the treaty between the United States
12 of America and Great Britain signed November 18, 1901, of
13 article I of the treaty signed between the United States of
14 America and the Republic of Colombia signed April 6, 1914,
15 and of articles II, III, and VI of the Treaty Concerning Per-
16 manent Neutrality and Operation of the Panama Canal, be-
17 tween the United States of America and the Republic of
18 Panama, signed September 7, 1977.

19 SEC. 413. PROCEDURES.—(a) The Panama Canal
20 Commission shall publish in the Federal Register notice of
21 any proposed change in the rules of measurement or rates of
22 tolls referred to in section 411(a). The Commission shall give
23 interested parties an opportunity to participate in the pro-
24 ceedings through submission of written data, views, or argu-
25 ments, and participation in a public hearing to be held not

1 less than thirty days after the date of publication of the
2 notice. The notice shall include the substance of the proposed
3 change and a statement of the time, place, and nature of the
4 proceedings. At the time of publication of such notice, the
5 Commission shall make available to the public an analysis
6 showing the basis and justification for the proposed change,
7 which, in the case of a change in rates of tolls, shall indicate
8 the conformity of the existing and proposed rates of tolls with
9 the requirements of section 412 of this Act.

10 (b) After consideration of the relevant matter presented,
11 the Commission may revise the proposed rules of measure-
12 ment or rates of tolls, as the case may be, except that, in the
13 case of rates of tolls, if such revision proposes rates greater
14 than those originally proposed, a new analysis of the pro-
15 posed rates shall be made available to the public, and a new
16 notice of the revised proposal shall be published in the Feder-
17 al Register apprising interested persons of the opportunity to
18 participate further in the proceedings through submission of
19 written data, views, or arguments, and participation in a
20 public hearing to be held not less than thirty days after the
21 date of publication of the new notice. The procedure set forth
22 in this subsection shall be followed for any subsequent revi-
23 sion of the proposed rates by the Commission which proposes
24 rates higher than those in the preceding proposal.

1 (c) After the proceedings have been conducted pursuant
2 to subsections (a) and (b) of this section, the Commission
3 shall publish in the Federal Register a notice of the changes
4 in the rules of measurement or rates of tolls, as the case may
5 be, to be recommended to the President.

6 (d) Upon publication of the notice pursuant to subsection
7 (c), the Commission shall forward a complete record of the
8 proceedings, with the recommendation of the Commission, to
9 the President for his consideration. The President may ap-
10 prove, disapprove, or modify any or all of the changes in the
11 rules of measurement or rates of tolls recommended by the
12 Commission.

13 (e) Rules of measurement or rates of tolls prescribed by
14 the President pursuant to this chapter shall take effect on a
15 date prescribed by the President which is not less than thirty
16 days after he publishes such rules or rates in the Federal
17 Register.

18 (f) Action to change the rules of measurement for the
19 Panama Canal or the rates of tolls for the use of the Canal
20 pursuant to this chapter shall be subject to judicial review in
21 accordance with chapter 7 of title 5 of the United States
22 Code.

23 SEC. 414. INTERIM TOLL ADJUSTMENT.—(a) After the
24 effective date of this section, the Panama Canal Company
25 may, only in accordance with the procedures set forth in sec-

1 tion 413 of this Act for making changes in tolls by the
2 Panama Canal Commission and the President, propose rates
3 of tolls calculated to cover the costs of maintaining and oper-
4 ating the Panama Canal during the first fiscal year of oper-
5 ation beginning on the effective date of this Act. Such pro-
6 posed rates shall be calculated in accordance with the provi-
7 sions of section 412(b) of this Act. Such proposed rates of
8 tolls shall be submitted to the President for approval in ac-
9 cordance with section 413 of this Act, except that the Presi-
10 dent may establish an effective date for such rates which is
11 less than 30 days after the publication in the Federal Regis-
12 ter required in subsection (e) of such section.

13 (b) If changes in rates proposed by the Panama Canal
14 Company do not become effective before the date on which
15 the Panama Canal Treaty of 1977 enters into force, the pro-
16 posed changes of the Panama Canal Company and any pro-
17 ceedings conducted with respect to such proposal before the
18 effective date of this Act shall be considered to be proposed
19 changes in rates of the Panama Canal Commission as fully as
20 if such changes had been proposed originally by the Commis-
21 sion pursuant to this chapter.

22 (c) This section shall take effect on the date of the en-
23 actment of this Act.

1 PART 2—REGULATION

2 CHAPTER 11—GENERAL REGULATIONS

3 SEC. 701. AUTHORITY OF PRESIDENT.—The Presi-
4 dent may prescribe, and from time to time amend, regulations
5 applicable within the areas and installations made available
6 to the United States for the operation and protection of the
7 Panama Canal pursuant to the Panama Canal Treaty of
8 1977 and related agreements concerning—

- 9 (1) the use of aircraft;
10 (2) the possession and use of alcoholic beverages;
11 (3) exclusion and removal of persons; and
12 (4) health and sanitation.

13 SEC. 702. AUTHORITY OF COMMISSION.—The
14 Panama Canal Commission may prescribe, and from time to
15 time amend, regulations applicable within the areas and in-
16 stallations made available to the United States for operation
17 and protection of the Panama Canal pursuant to the Panama
18 Canal Treaty of 1977 and related agreements concerning—

- 19 (1) the keeping and impounding of domestic ani-
20 mals;
21 (2) fire prevention;
22 (3) the sale or use of fireworks;
23 (4) the use of roads and highways;
24 (5) photographing of areas, objects, installations,
25 or structures;

1 (6) swimming in the Panama Canal and adjacent
2 waters; and

3 (7) the protection of wildlife; hunting and fishing.

4 CHAPTER 13—SHIPPING AND NAVIGATION

5 Subchapter I—Operation of Canal

6 SEC. 1331. OPERATING REGULATIONS.—The Presi-
7 dent may prescribe, and from time to time amend, regulations
8 governing—

9 (1) the operation of the Panama Canal;

10 (2) the navigation of the harbors and other waters
11 of the Panama Canal and areas adjacent thereto, in-
12 cluding the ports of Balboa and Cristobal;

13 (3) the passage and control of vessels through the
14 Panama Canal or any part thereof including the locks
15 and approaches thereto;

16 (4) pilotage in the Canal or the approaches there-
17 to through the adjacent waters; and

18 (5) the licensing of officers or other operators of
19 vessels navigating the waters of the Panama Canal
20 and areas adjacent thereto, including the ports of
21 Balboa and Cristobal.

22 Subchapter II—Inspection of Vessels

23 SEC. 1351. VESSELS SUBJECT TO INSPECTION.—
24 With the exception of private vessels merely transiting the
25 Panama Canal, and of public vessels of all nations, vessels

1 navigating the waters of the Panama Canal shall be subject
 2 to an annual inspection of hulls, boilers, machinery, equip-
 3 ment, and passenger accommodations.

4 SEC. 1352. FOREIGN VESSELS.—With respect to a for-
 5 eign vessel of a country which has inspection laws approxi-
 6 mating those of the United States, any such vessel having an
 7 unexpired certificate of inspection duly issued by the authori-
 8 ties of such country shall not be subject to an inspection
 9 other than that necessary to determine whether the vessel,
 10 its boilers, and its lifesaving equipment are as stated in the
 11 certificate of inspection. A certificate of inspection may not
 12 be accepted as evidence of lawful inspection under this sec-
 13 tion unless similar privileges are granted to vessels of the
 14 United States under the laws of the country to which the
 15 vessel belongs.

16 SEC. 1353. REGULATIONS GOVERNING INSPEC-
 17 TION.—The Panama Canal Commission shall prescribe, and
 18 from time to time may amend, regulations concerning the
 19 inspection of vessels conforming as nearly as practicable to
 20 the laws and regulations governing marine inspection by the
 21 United States Coast Guard.

22 TITLE II. TREATY TRANSITION PERIOD

23 CHAPTER 1. LAWS CONTINUED IN FORCE

24 SEC. 1501. LAWS, REGULATIONS, AND ADMINISTRA-
 25 TIVE AUTHORITY.—To the extent not inconsistent with the

1 Panama Canal Treaty of 1977 and related agreements and
2 the provisions of this Act, the Canal Zone Code and other
3 laws, regulations, and administrative authority of the United
4 States applicable in the Canal Zone immediately before the
5 date on which the Panama Canal Treaty of 1977 enters into
6 force shall continue in force for the purpose of the exercise by
7 the United States of law enforcement and judicial jurisdiction
8 during the transition period provided for in Article XI of the
9 Treaty (hereinafter in this Act referred to as the "transition
10 period").

11 CHAPTER 2. COURTS

12 SEC. 1511. JURISDICTION.—(a) During the transition
13 period, the jurisdiction of the United States District Court for
14 the District of the Canal Zone and the magistrates' courts
15 under title 3 of the Canal Zone Code shall be continued,
16 subject to the limitations set forth in Article XI of the
17 Panama Canal Treaty of 1977.

18 (b) For purposes of the exercise of the jurisdiction pro-
19 vided in Article XI of the Panama Canal Treaty of 1977, the
20 United States District Court and magistrates' courts referred
21 to in subsection (a) shall construe the terms "United States
22 citizen employees", "members of the United States Forces",
23 "civilian component", and "dependents" as such terms are
24 defined in the Panama Canal Treaty of 1977 and related
25 agreements, and shall construe the term "areas and installa-

1 tions made available for the use of the United States'' to
2 mean (1) the Panama Canal operating areas and housing
3 areas described in Annex A to the Agreement in Implemen-
4 tation of Article III of that Treaty, (2) the Ports of Balboa
5 and Cristobal described in Annex B to that Agreement, and
6 (3) the Defense Sites and Areas of Military Coordination de-
7 scribed in Annex A to the Agreement in Implementation of
8 Article IV of that Treaty.

9 SEC. 1512. DIVISION AND TERMS OF DISTRICT
10 COURT.—The United States District Court for the District
11 of the Canal Zone may conduct its affairs at such places
12 within the areas made available for the use of the United
13 States pursuant to the Panama Canal Treaty of 1977 and
14 related agreements, and at such times, as the district judge
15 may designate by rule or order.

16 SEC. 1513. TERMS OF CERTAIN OFFICES.—Notwith-
17 standing the provisions of sections 5, 41, 45, and 82 of title 3
18 of the Canal Zone Code, the term of office of a district judge,
19 magistrate, United States attorney or United States marshal
20 appointed after the date of enactment of this Act shall extend
21 for a period of thirty months beginning on the date on which
22 the Panama Canal Treaty of 1977 enters into force, and any
23 such term shall be subject to such extension of time as may
24 be provided for the disposition of pending cases by agreement
25 between the United States and the Republic of Panama, pur-

1 suant to the last sentence of paragraph 7 of Article XI of the
2 Panama Canal Treaty of 1977.

3 SEC. 1514. RESIDENCE REQUIREMENTS.—Sections
4 5(d), 7(d), 41(d) and 45(d) of title 3 of the Canal Zone Code,
5 the second sentence of section 42 of such title, and the
6 second sentence of section 82(c) of such title, which provi-
7 sions require that certain court officials reside in the Canal
8 Zone, are hereby repealed.

9 SEC. 1515. SPECIAL DISTRICT JUDGE.—(a) Section 6
10 of title 3 of the Canal Zone Code is amended to read as
11 follows:

12 “§ 6. Special district judge

13 “The chief judge of the judicial circuit of the United
14 States in which the district court lies may designate and
15 assign a special district judge to act when necessary—

16 “(1) during the absence of the district judge;

17 “(2) during the disability or disqualification of the
18 district judge because of sickness or otherwise to dis-
19 charge his duties; or

20 “(3) when there is a vacancy in the office of dis-
21 trict judge.”.

22 (b) Each designation and assignment by the chief judge
23 under subsection (a) shall be made in accordance with chap-
24 ter 13 of title 28 of the United States Code, which shall be
25 deemed to apply for such purposes.

1 SEC. 1516. MAGISTRATES' COURTS.—(a) The two
2 magistrates' courts established pursuant to section 81 of title
3 3 of the Canal Zone Code and existing immediately before
4 the date on which the Panama Canal Treaty of 1977 enters
5 into force shall continue in operation for a period of thirty
6 months beginning on such date unless terminated during such
7 thirty-month period under subsection (b) of this section.

8 (b) During the thirty-month period referred to in subsec-
9 tion (a), the President may terminate one or both magis-
10 trates' courts, together with the positions of magistrate and
11 constable corresponding thereto, if the President determines
12 that the workload is insufficient to warrant continuance of
13 either or both courts. If one of the courts is so terminated,
14 the remaining magistrate's court shall exercise the jurisdic-
15 tion that otherwise would have been exercised by the termi-
16 nated court and shall take custody of and administer all rec-
17 ords of the terminated court.

18 (c) If both magistrates' courts are terminated under sub-
19 section (b)—

20 (1) the United States District Court for the Dis-
21 trict of the Canal Zone shall exercise the jurisdiction of
22 the magistrates' courts;

23 (2) all records of the magistrates' courts shall be
24 transferred to and shall be considered to be records of
25 the district court;

1 (3) a criminal action that otherwise would have
2 come within the original jurisdiction of the magistrates'
3 courts shall be instituted in the district court by a com-
4 plaint executed pursuant to section 3701 of title 6 of
5 the Canal Zone Code, and the law and rules applicable
6 in the district court shall thereafter apply;

7 (4) all other criminal actions shall be instituted in
8 the district court by the filing in each case of an infor-
9 mation pursuant to chapter 213 of title 6 of the Canal
10 Zone Code; and

11 (5) the provisions of section 172 of title 3 and
12 sections 3801-3806 of title 6 of the Canal Zone Code,
13 relating to preliminary examinations, shall not apply.

14 CHAPTER 3. ATTORNEYS

15 SEC. 1521. OATH OF ATTORNEYS.—Section 543 of
16 title 3 of the Canal Zone Code is amended to read as follows:

17 “§543. Oath of Attorneys Admitted to Bar

18 “Before receiving a certificate the applicant shall take
19 and subscribe in court an appropriate oath prescribed by the
20 district judge.”.

21 CHAPTER 4. TRANSITION AUTHORITY

22 SEC. 1531. TRANSITION AUTHORITY OF PRESI-
23 DENT.—Except as expressly provided to the contrary in this
24 Act, in any other statute, or in the Panama Canal Treaty of
25 1977 and related agreements, any authority necessary for the

1 exercise during the transition period of the rights and respon-
2 sibilities of the United States specified in Article XI of the
3 Panama Canal Treaty of 1977 shall be vested in the Presi-
4 dent.

5 TITLE III—GENERAL PROVISIONS

6 CHAPTER 1—CEMETERIES

7 SEC. 1601. ADMINISTRATION OF COROZAL CEME-
8 TERY.—(a) On or after the effective date of this chapter, the
9 President may enter into an agreement with the Republic of
10 Panama for the administration by the American Battle Monu-
11 ments Commission of such part of Corozal Cemetery in the
12 Canal Zone as encompasses the remains of citizens of the
13 United States. Such agreement shall provide for the adminis-
14 tration of such part of Corozal Cemetery by the American
15 Battle Monuments Commission free of all taxes and other
16 charges and without compensation to the Republic of
17 Panama, and in accordance with the practices, privileges,
18 and immunities associated with the administration of ceme-
19 teries outside the United States by the American Battle
20 Monuments Commission, including the display of the flag of
21 the United States.

22 (b) Upon the conclusion of the agreement with the Re-
23 public of Panama referred to in subsection (a) of this section,
24 the President may transfer to the American Battle Monu-
25 ments Commission the administration of such part of Corozal

1 Cemetery as encompasses the remains of citizens of the
2 United States.

3 SEC. 1602. DISINTERMENT AND REINTERMENT OF
4 REMAINS OF UNITED STATES CITIZENS.—(a) On or after
5 the effective date of this chapter, the President may provide
6 for—

7 (1) the removal of the remains of citizens of the
8 United States from Mount Hope Cemetery in the
9 Canal Zone to such part of Corozal Cemetery in the
10 Canal Zone as encompasses the remains of citizens of
11 the United States, or, upon the request of the next of
12 kin, for the transportation of such remains from Mount
13 Hope Cemetery to the United States for reinterment;
14 and

15 (2) upon the request of the next of kin not later
16 than thirty months after the date on which the Treaty
17 between the United States and Panama Concerning
18 the Permanent Neutrality and Operation of the
19 Panama Canal, signed September 7, 1977, enters into
20 force, the transportation to the United States for rein-
21 terment of the remains of citizens of the United States
22 interred in Corozal Cemetery.

23 (b) The remains of any United States citizen whose next
24 of kin objects in writing to the Secretary of the Army not
25 later than three months after the date of the exchange of the

1 instruments of ratification of the Treaty Concerning the Per-
2 manent Neutrality and Operation of the Panama Canal,
3 signed September 7, 1977, may not be removed from Mount
4 Hope Cemetery under subsection (a) of this section. Before
5 the date on which such Treaty enters into force, the Presi-
6 dent shall fully advise the next of kin objecting under this
7 subsection of all available options in reference to the remains
8 of United States citizens and of the implications of such op-
9 tions.

10 SEC. 1603. COSTS.—(a) The President may provide for
11 the removal and reinterment of the remains of United States
12 citizens pursuant to this chapter through any agency of the
13 United States. The costs of such removal and reinterment
14 may be paid out of any appropriations available to such agen-
15 cies and shall not be treated as expenditures for the mainte-
16 nance and operation of the Panama Canal for purposes of
17 section 412 of this Act.

18 (b) Costs paid from appropriated funds pursuant to sub-
19 section (a) of this section shall include costs incurred for dis-
20 interment, preparation, cremation, transportation, and rein-
21 terment, but may not include costs incurred for caskets, urns,
22 funeral home services, vaults, plots, or crypts, which costs
23 shall be borne by the next of kin.

1 SEC. 1604. EFFECTIVE DATE.—The provisions of this
2 chapter shall take effect on the date of the enactment of this
3 Act.

4 CHAPTER 2—IMMIGRATION

5 SEC. 1611. SPECIAL IMMIGRANTS.—(a) Section
6 101(a)(27) of the Immigration and Nationality Act (8 U.S.C.
7 1101(a)(27)), relating to the definition of special immigrants,
8 is amended—

9 (1) by striking out “or” at the end of subpara-
10 graph (C);

11 (2) by striking out the period at the end of sub-
12 paragraph (D) and inserting in lieu thereof a semicolon;
13 and

14 (3) by adding after subparagraph (D) the following
15 new subparagraphs:

16 “(E) an immigrant who is or has been an employ-
17 ee of the Panama Canal Company or Canal Zone Gov-
18 ernment before the date on which the Panama Canal
19 Treaty of 1977 enters into force, who is resident in the
20 Canal Zone on the effective date of the exchange of
21 instruments of ratification of the Panama Canal Treaty
22 of 1977, and who has performed faithful service for
23 one year or more, and his accompanying spouse and
24 children; or

1 “(F) an immigrant, and his accompanying spouse
2 and children, who is a Panamanian national and (i)
3 who, before the date on which the Panama Canal
4 Treaty of 1977 enters into force, has been honorably
5 retired from United States Government employment in
6 the Canal Zone with a total of fifteen years or more of
7 faithful service or (ii) who, on the date on which the
8 Panama Canal Treaty of 1977 enters into force, has
9 been faithfully employed by the United States Govern-
10 ment in the Canal Zone (or former Canal Zone) for fif-
11 teen years or more and who subsequently is honorably
12 retired from such employment.”.

13 (b) Section 212(d) of such Act (8 U.S.C. §1182(d)), re-
14 lating to waivers of conditions of inadmissibility to the United
15 States, is amended by adding after paragraph (8) the follow-
16 ing new paragraph:

17 “(9) The provisions of paragraphs (7) and (15) of
18 subsection (a) shall not be applicable to any alien who
19 is seeking to enter the United States as a special immi-
20 grant under subparagraphs (E) or (F) of section
21 101(a)(27).”

22 (c) The amendments made by this section shall take
23 effect on the date of the enactment of this Act.

1 CHAPTER 3—AMENDMENTS; REPEALS; EFFECTIVE DATE

2 SEC. 1621. CONFORMING AMENDMENTS.—(a) Clause
3 (vii) of section 5102(a) of title 5 of the United States Code is
4 amended to read as follows:

5 “(vii) the Panama Canal Commission; or”.

6 (b) The second sentence of section 403(a) of title 39 of
7 the United States Code is amended by striking out “Except
8 as provided in the Canal Zone Code, the” and inserting in
9 lieu thereof “The”.

10 (c) Section 3401(b) of title 39 of the United States Code
11 is amended by inserting “or” immediately before “the Virgin
12 Islands” and by striking out “or the Canal Zone,”.

13 (d) Section 3402 of title 39 of the United States Code is
14 amended—

15 (1) in subsection (a) by striking out “(a)” and by
16 striking out “each post office in the Canal Zone postal
17 service” and inserting in lieu thereof “each military
18 post of the United States Forces in the Republic of
19 Panama”; and

20 (2) by striking out subsection (b).

21 (e) Section 3682(b)(5) of title 39 of the United States
22 Code is amended by striking out “the Canal Zone and”.

23 (f) Section 1 of title II of the Act of June 15, 1917 (50
24 U.S.C. 191), is amended—

25 (1) by striking out the second paragraph; and

1 (2) in subsection (b) of the last paragraph by strik-
2 ing out “the Canal Zone,”.

3 (g) Section 1 of title XIII of the Act of June 15, 1917
4 (50 U.S.C. 195), is amended by striking out “the Canal Zone
5 and”.

6 (h) The first section of the Act of August 9, 1954 (50
7 U.S.C. 196), is amended by striking out “, including the
8 Canal Zone,”.

9 (i) Title I of the Act of November 27, 1973 (87 Stat.
10 636), is amended by striking out the heading “PAYMENT TO
11 THE REPUBLIC OF PANAMA” and all that follows that relates
12 to that heading.

13 SEC. 1622. REPEALS.—The following provisions of law
14 are hereby repealed:

15 (1) Title 2 of the Canal Zone Code.

16 (2) Sections 2 and 3 of title 3 of the Canal Zone
17 Code.

18 (3) Subchapter III of chapter 237 of title 6 of the
19 Canal Zone Code.

20 (4) Subsection (d) of section 38 of the Arms
21 Export Control Act (22 U.S.C. 2778(d)).

22 , (5) Section 4 of the Act of November 15, 1941
23 (50 U.S.C. 191b).

24 SEC. 1623. EFFECTIVE DATE.—Except as provided in
25 sections 202, 203, 414, 1511, 1604, and 1611 of this Act,

- 1 the provisions of this Act shall take effect on the date on
- 2 which the Panama Canal Treaty of 1977 enters into force.



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

16 APR 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request to the Secretary of Defense for views of the Department of Defense on H.R. 111, 96th Congress, a bill "To provide for the operation and maintenance of the Panama Canal and to provide for the exercise of the rights and performance of the duties of the United States provided in the Panama Canal Treaty of 1977."

The Department of the Army is responding on behalf of the Department of Defense concerning the proposed bill. The Department of Defense supports the Administration bill to implement the Panama Canal Treaties. H.R. 111 would establish the Panama Canal Commission as an appropriated agency rather than a Government corporation as called for in the Administration proposed legislation. Further H.R. 111 is excessively explicit in giving the Secretary of Defense direct control over the Commission. It would also unnecessarily preclude membership of Republic of Panama officials on the Commission's Board of Directors and require that four of the five United States members be drawn from outside the United States Government. Therefore, the Department of Defense strongly objects to H.R. 111.

In addition to this general objection, the Department of Defense has the following specific objections and comments:

1. Section 108 entitled "Control by Armed Forces in time of war" appears inconsistent with several provisions of the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal.

Article III of the Panama Canal Treaty grants the United States the authority to operate the Canal. However, that responsibility must be exercised by the Panama Canal



Commission which is to be supervised by a Board of Directors composed of both United States and Panamanian nationals. No exception is made for periods of war. Implicit in Section 108 is that a designated military officer could in time of war supplant the Panama Canal Commission and its Board of Directors with respect to the supervision and operation of the Canal. This result would be in contravention of Article III.

To the extent that the purpose of Section 108 is to permit control of the passage of warships through the Canal, Section 108 would appear also to be in violation of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. In Article I of that Treaty, the Republic of Panama declares the permanent neutrality of the Canal; Article II of that Treaty provides that the vessels of all nations are permitted open, secure, non-discriminatory passage through the Canal both in time of peace as well as in time of war. Article III of that Treaty provides that vessels of war and auxiliary vessels of all nations shall at all times be entitled to transit the Canal, irrespective of their internal operation, means of propulsion, origin, destination or armament, without being subjected, as a condition of transit, to inspection, search or surveillance.

3. Section 147, paragraph (a)(3) should be modified so that the phrase, "in the judgment of the head of the department concerned, the recruitment and retention of the medical doctor is essential" applies to all the categories of employees listed and not just to medical doctors.

4. Section 203, paragraph (a) should be revised to read: "(a) A citizen of the United States--...shall, upon the employee's request, be accorded appropriate placement assistance to vacancies with the United States Government in the United States."

5. Sections 373 and 374 headed "Disposition of property of the United States" and "Transfer of property to Panama," respectively, conflict with the well-documented Executive branch position that the Panama Canal Treaty provisions concerning transfer of property are self-executing.

6. Section 701 sets forth the regulatory power of the President to issue regulations concerning, inter-alia, use of aircraft and health and sanitation. As drafted, the power seems to be too broadly stated and should be qualified. In the Agreement in

Implementation of Articles III and IV of the Panama Canal Treaty, there are provisions that address these subjects. Introduction by the phrase "To the extent permitted by the Panama Canal Treaty of 1977 and related Agreements...." would provide the necessary qualification.

7. Paragraph (c)(1) of Section 207 appears to include employees of Department of Defense nonappropriated fund instrumentalities. However, the language "each employee of the United States Forces in the Republic of Panama" in the parent paragraph (c)(1) should be clarified so that there is no doubt as to whether DoD nonappropriated fund instrumentalities' employees are included. Paragraph (c)(1), should be amended as follows:

" . . . States Forces including employees of all non-appropriated fund instrumentalities of the Government of the United States in and under the Department of Defense in the Republic of Panama."

Paragraph (c)(1) of this section also requires that the retirement equity be purchased in the Social Security System of the Republic of Panama whereas the Administration's Bill is silent as to where the equity needs to be purchased. Since it may be advantageous to the United States Government to purchase the required retirement equity elsewhere, it is recommended that the phrase 'in the Social Security System of the Republic of Panama' be deleted.

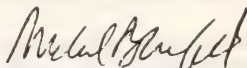
8. Section 225 excludes from coverage of Chapter 71, Title 5, United States Code, employees of all United States Government agencies in the area presently constituting the Canal Zone that will become part of the Canal operating area. Chapter 71 concerns Labor-Management Relations. United States citizen employees of the Department of Defense should not be excluded from the provisions of that chapter and should be covered as in other areas of the world. To include the Panamanians under this law would, however, be in conflict with the Status of Forces Agreement. Article VII, Section 2 of the Agreement implementing Article IV of the Treaty provides that the "terms, conditions and prerequisites for the employment of Panamanian personnel shall conform with the general principles contained in the labor laws of the Republic of Panama." The intent of this provision, which is similar to other Status of Forces agreements governing employment of host country nationals by DOD in various other countries, cannot be implemented by imposition of a United States Government collective bargaining system on the DOD's Panamanian workforce. For these employees and their unions, a system is required which conforms in some meaningful way to Panamanian customs and practices.

The enactment of this bill will cause no apparent increase in budgetary requirements of the Department of Defense over and above those already submitted through budget channels by the Department of Defense.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael Blumenfeld", written in a cursive style.

Michael Blumenfeld
Assistant Secretary of the Army
(Civil Works)



DEPARTMENT OF STATE

Washington, D. C. 20520

FEB 14 1979

Dear Mr. Chairman:

The Secretary has asked me to respond to your letter of January 17, requesting comments on H.R. 111, a bill to implement the Panama Canal Treaty of 1977. I refer, for that purpose, to the legislation prepared for the same end by the Administration, introduced on January 31 under your co-sponsorship. Enclosed herewith is a comparison of the two bills prepared by legal staffs of the Departments of State and Army.

As the comparison indicates, the bills are similar in many respects. Both reflect a conscientious effort to create a legislative framework under which the rights of the United States under the new Treaty can be discharged effectively.

The differences that exist between the Bills -- and these are in most instances differences of approach -- cover inter alia the following matters:

- the organizational form of and leadership responsibility for the Panama Canal Commission
- the qualifications for membership on the Board of Directors of the Commission
- the nature of the Consultative Committee
- payments to the Treasury for interest and amortization
- the authority for transfers of property to Panama

The Honorable

John M. Murphy, Chairman,
Committee on Merchant Marine and Fisheries,
House of Representatives.

2

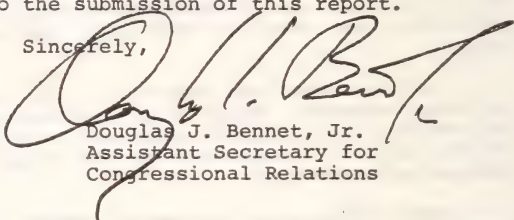
-- the need for Senate confirmation of principal officials of the Commission, and

-- the nature of control of Canal operations during wartime.

Administration witnesses will be discussing these and other subjects during hearings before your Committee later this week. While we prefer the approaches in the Administration's proposed bill, my colleagues and I look forward to working constructively with you and your staff toward our common goal of producing the best possible legislation.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

A large, stylized handwritten signature in dark ink, appearing to read 'Douglas J. Bennet, Jr.', is written over the typed name and title.

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

Enclosure:

As stated.

96TH CONGRESS
1ST SESSION

H. R. 454

To provide the congressional authorization required by clause 2, section 3, article IV of the Constitution, for the transfer to Panama of the property of the United States in the Canal Zone; to authorize the appropriations required by clause 7, section 9, article I of the Constitution, to implement that transfer of United States property, including the transfer of military installations and of cemeteries in which United States veterans are interred, the closing of the Canal Zone courts, and the assumption by the United States Postal Service of the functions of the Canal Zone postal service; to otherwise provide legislatively the authorizations not provided pursuant to clause 2, section 2, article II of the Constitution which are necessary to implement the Panama Canal Treaty of 1977 and related agreements; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 15, 1979

Mr. HANSEN introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries, International Relations, Judiciary, and Post Office and Civil Service

A BILL

To provide the congressional authorization required by clause 2, section 3, article IV of the Constitution, for the transfer to Panama of the property of the United States in the Canal Zone; to authorize the appropriations required by clause 7, section 9, article I of the Constitution, to implement that transfer of United States property, including the transfer of military installations and of cemeteries in which United States veterans are interred, the closing of the Canal Zone courts, and the assumption by the United States Postal Service of the functions of the Canal Zone postal service; to otherwise provide legislatively the authorizations not pro-

vided pursuant to clause 2, section 2, article II of the Constitution which are necessary to implement the Panama Canal Treaty of 1977 and related agreements; and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That it is the purpose of this Act to provide legislation neces-
4 sary to or desirable for the implementation of the Panama
5 Canal Treaty of 1977 between the United States of America
6 and the Republic of Panama and of the related agreements
7 accompanying that Treaty.

8 SEC. 2. DEFINITIONS AND GENERAL PROVISIONS.—(a)
9 As used in this Act, references to the Panama Canal Treaty
10 of 1977 and related agreements mean the Panama Canal
11 Treaty between the United States of America and the Re-
12 public of Panama signed September 7, 1977, and the agree-
13 ments relating to and implementing that Treaty signed on the
14 same date.

15 (b) The Canal Zone Code is hereby redesignated the
16 Panama Canal Code.

17 (c) Except as otherwise provided in, or where incon-
18 sistent with, the provisions of this Act, the following words
19 and phrases are amended as follows wherever they appear in
20 the Panama Canal Code and other laws of the United States,
21 unless in context the changes are clearly not intended, or
22 unless such words and phrases refer to a time prior to the

3

1 effective date of this Act, as defined in section 502 (herein
2 called "the effective date") :

3 (1) "Panama Canal Company" to read "Panama
4 Canal Commission".

5 (2) "Company" to read "Commission" wherever
6 the word "Company" has reference to the Panama
7 Canal Company.

8 (3) "Canal Zone Government" to read "Panama
9 Canal Commission".

10 (4) "Governor" or "Governor of the Canal Zone"
11 to read "Panama Canal Commission" wherever the
12 reference is to the Governor of the Canal Zone.

13 (5) "President" to read "Administrator" wherever
14 the word "President" has reference to the president of
15 the Panama Canal Company.

16 (6) "Government of the Canal Zone", or "Govern-
17 ment", wherever the reference is to the Government of
18 the Canal Zone, to read "United States of America".

19 (7) "Canal Zone waters" and "waters of the Canal
20 Zone" to read "Panama Canal waters" and "waters of
21 the Panama Canal", respectively.

22 (8) "Canal Zone Merit System" to read "Panama
23 Canal Employment System".

24 (9) "Canal Zone Board of Appeals" to read "Pan-
25 ama Canal Board of Appeals".

26 (d) Reference to the Canal Zone in provisions of the

1 Panama Canal Code or other laws of the United States which
2 apply to transactions, occurrences, or status after (treaty
3 effective date) shall be deemed to be to areas and installa-
4 tions in the Republic of Panama made available to the United
5 States pursuant to the Panama Canal Treaty of 1977 and
6 related agreements.

7 (e) The President shall, within two years after the
8 Panama Canal Treaty of 1977 enters into force, submit to
9 the Congress proposed legislation which would—

10 (1) amend or repeal provisions of law which in
11 their present form are applicable only during the transi-
12 tion period prescribed in Article XI of that Treaty, and

13 (2) incorporate the remaining provisions of the
14 Panama Canal Code into the United States Code, pro-
15 posing any changes thereto considered advisable in light
16 of the experience as of that time under that Treaty.

17 TITLE I—PANAMANIAN RELATIONS AND
18 SECURITY MATTERS

19 SEC. 101. UNITED STATES-PANAMA JOINT COMMIT-
20 TEES; SEA LEVEL CANAL STUDY.— (a) The President shall
21 appoint the representatives of the United States to the Joint
22 Commission on the Environment to be established under
23 paragraph 2 of Article VI of the Panama Canal Treaty of

1 1977, and to any joint committee or body with the Republic
2 of Panama to study the possibility of a sea level canal in the
3 Republic of Panama pursuant to Article XII of that Treaty.

4 (b) Upon the completion of any joint study between
5 the United States and the Republic of Panama concerning
6 the feasibility of a sea level canal in the Republic of Panama
7 pursuant to paragraph 1 of Article XII of the Panama Canal
8 Treaty of 1977, the text of the study shall be transmitted by
9 the President to the President of the Senate and to the
10 Speaker of the House of Representatives.

11 (c) No construction of a sea level canal by the United
12 States in the Republic of Panama shall be undertaken except
13 with express congressional authorization after submission of
14 the study by the President as provided in subsection (b).

15 (d) The President shall designate and the Secretary
16 of State shall coordinate the participation of the representa-
17 tives of the United States to the Consultative Committee
18 between the United States and the Republic of Panama to
19 magistrate and constable corresponding thereto, may be
20 Panama Canal Treaty of 1977.

21 SEC. 102. SECURITY LEGISLATION.—(a) Sections 34
22 and 35 of title 2 of the Panama Canal Code are repealed.

23 (b) Section 1 of title II of the Act of June 15, 1917

1 (50 U.S.C. 191) is amended by (1) striking the second
2 paragraph of that section, and by (2) striking the term
3 “the Canal Zone,”.

4 (c) Section 2 of the Act of November 15, 1941 (50
5 U.S.C. 191b) is repealed.

6 (d) Section 1 of title XIII of the Act of June 15, 1917
7 (50 U.S.C. 195) is amended by striking the term “the Canal
8 Zone and”.

9 (e) Section 1 of the Act of August 9, 1954 (50 U.S.C.
10 196) is amended by striking the term “including the Canal
11 Zone,”.

12 SEC. 103. ARMS EXPORT CONTROL.—Section 38 of the
13 Arms Export Control Act (22 U.S.C. 2778) is amended
14 by striking out subsection (d) thereof.

15 SEC. 104. PRIVILEGES AND IMMUNITIES.—The Secre-
16 tary of State shall from among persons recommended by the
17 Panama Canal Commission determine, and shall maintain
18 and from time to time furnish to the Government of the
19 Republic of Panama, the list of those officials and other per-
20 sons who shall enjoy the privileges and immunities accorded
21 under Article VIII of the Panama Canal Treaty of 1977.

22 SEC. 105. TERMINATION OF CANAL ZONE GOVERN-
23 MENT; EXTRADITION WITH PANAMA; TRANSFER OF REC-
24 ORDS.

25 (a) Sections 1, 2, 3, 31, 32, 33, 333, and 334 of title

1 2 and sections 5081-5092 of title 6 of the Panama Canal
2 Code are repealed.

3 (b) The Panama Canal Commission, other agencies or
4 departments, and United States courts in the Republic of
5 Panama are authorized to transfer any of their records, or
6 copies thereof, including records acquired from the Canal
7 Zone Government or Panama Canal Company such as vital
8 statistics records, to other agencies, departments or courts
9 of the United States and, under the coordination and with
10 the approval of the Ambassador, to the Government of the
11 Republic of Panama.

12 TITLE II—PANAMA CANAL COMMISSION

13 CHAPTER 1.—COMMISSION: FISCAL MATTERS

14 SEC. 201. (a) Section 61 of title 2 of the Panama Canal
15 Code is amended to read as follows:

16 "SEC. 61. CONTINUATION, PURPOSES, OFFICES AND
17 RESIDENCE OF THE COMMISSION.—(a) For the purposes
18 of managing, operating and maintaining the Panama Canal
19 and its complementary works, installations and equipment,
20 and of conducting operations incident thereto, in accordance
21 with the Panama Canal Treaty of 1977 and related agree-
22 ments, the Panama Canal Commission is established as a
23 body corporate and as an agency and instrumentality of the
24 United States, and is declared to be the successor to the
25 Panama Canal Company.

1 “(b) The principal office of the Commission shall be lo-
2 cated in the Republic of Panama in one of the areas made
3 available for the use of the United States under the Panama
4 Canal Treaty of 1977 and related agreements, but the Com-
5 mission may establish agencies or branch offices in such
6 other places as it deems necessary or appropriate in the con-
7 duct of its business. Within the meaning of the laws of the
8 United States relating to jurisdiction or venue in civil ac-
9 tions, the Commission is an inhabitant and resident of the
10 District of Columbia, and of the eastern judicial district of
11 Louisiana.”

12 (b) Subsection (a) of section 62 of title 2 of the Pan-
13 ama Canal Code is amended by substituting the words
14 “Panama Canal Company” for “Company” and the words
15 “Panama Canal Commission” for “Panama Canal Com-
16 pany”.

17 SEC. 202. (a) Subsection (e) of section 62 of title 2
18 of the Panama Canal Code is repealed.

19 (b) Subsection (f) of section 62 of title 2 of the
20 Panama Canal Code is amended by substituting the words
21 “compute its capital surplus account” for “account for its
22 surplus”, and by deleting the words “in determining the base
23 for the interest payments required by subsection (e) of this
24 section”.

25 (c) Section 70 of title 2 of the Panama Canal Code

1 is amended by deleting the words "in determining the base
2 for interest payments required by section 62 (e) of this
3 title", and by inserting the term "including operating ex-
4 penses and payments required by Article III (5) and Ar-
5 ticle XIII (4) (a), (b) and (c) of the Panama Canal
6 Treaty of 1977," after the term "working capital require-
7 ments,".

8 (d) Section 72 of title 2 of the Panama Canal Code is
9 amended by deleting the words "pursuant to section 62 (e)
10 of this title".

11 SEC. 203. (a) Subsection (g) of section 62 of title 2
12 of the Panama Canal Code is amended to read as follows:

13 "(g) The Panama Canal Commission shall pay directly
14 from Canal operating revenues to the Republic of Panama
15 those payments required under paragraph 4 of Article XIII
16 of the Panama Canal Treaty of 1977. In determining the
17 adequacy of operating revenues for the purpose of payments
18 to Panama under paragraph 4 (c) of that Article, such op-
19 erating revenues of a given fiscal period shall be reduced by
20 all expenditures of that period including: (i) amounts paid
21 or payable for operations and maintenance, inventory, goods,
22 services and that portion of unfunded liabilities paid or cur-
23 rently payable; (ii) payments to Panama under paragraphs
24 4 (a) and 4 (b) of that Article and under paragraph 5 of
25 Article III of the Treaty; (iii) amounts payable into a

1 capital reserve account programed to fund requirements for
2 plant replacement, expansion and improvements; (iv)
3 amounts payable into programed reserve accounts established
4 prior to the effective date of an increase in tolls for the
5 purpose of matching revenues with expenses during the pe-
6 riod projected for a given toll rate to remain in effect;
7 and (v) the accumulative sum from prior years (beginning
8 with the year in which the Panama Canal Treaty of 1977
9 enters into force) of any excess of such expenditures of the
10 Commission over operating revenues.”.

11 (b) Title I of the Act of November 27, 1973 (87 Stat.
12 636) is amended by striking out the heading “Payment to
13 the Republic of Panama” and all that follows under that
14 heading.

15 SEC. 204. Section 62 of title 2 of the Panama Canal
16 Code is amended by adding a new subsection (h) reading
17 as follows:

18 “(h) Payments by the Commission to the Republic of
19 Panama for providing public services in accordance with
20 paragraph (5) of Article III of the Panama Canal Treaty
21 of 1977 shall be treated for all purposes as an operating cost
22 of the Commission.”.

23 SEC. 205. Subsection (a) of section 63 of title 2 of the
24 Panama Canal Code is amended to read as follows:

25 “(a) A board of directors shall manage the affairs of

1 the Panama Canal Commission. The President of the United
2 States shall appoint the members of the board in accordance
3 with paragraph 3 of Article III of the Panama Canal Treaty
4 of 1977, and neither this chapter nor any other law prevents
5 the appointment and service as a director, or as an officer
6 of the Commission, of an officer or employee of the United
7 States, or of a person who is not a national of the United
8 States. Each director so appointed shall, subject to para-
9 graph 3 of Article III of the Panama Canal Treaty of
10 1977, hold office at the pleasure of the President, and, before
11 entering upon his duties, shall take an oath faithfully to dis-
12 charge the duties of his office.”.

13 SEC. 206. Subsection (c) of section 63 of title 2 of the
14 Panama Canal Code is amended to read as follows:

15 “(c) The directors shall hold meetings as provided by
16 the bylaws of the Panama Canal Commission. A quorum for
17 the transaction of business shall consist of a majority of the
18 directors of which a majority of those present are citizens of
19 the United States.”

20 SEC. 207. Section 64 of title 2 of the Panama Canal
21 Code is amended to read as follows:

22 “SEC. 64. ADMINISTRATOR AND DEPUTY.—The Presi-
23 dent of the United States shall appoint the Administrator and
24 Deputy Administrator of the Panama Canal Commission.
25 The Administrator shall, subject to the direction and under

1 the supervision of the Board, be the chief executive officer of
2 the Commission. The Administrator and Deputy Administra-
3 tor shall hold office at the pleasure of the President.”

4 SEC. 208. Paragraph (3) of subsection (a) of section
5 65 of title 2 of the Panama Canal Code is amended to read
6 as follows:

7 “(3) Sue and be sued in its corporate name, except
8 that—

9 “(A) its amenability to suit is limited by the im-
10 munities provided by Article VIII of the Panama Canal
11 Treaty of 1977, and otherwise by law;

12 “(B) salaries or other moneys owed by the Com-
13 mission to its employees shall not be subject to attach-
14 ment, garnishment or similar process, except as other-
15 wise expressly provided by the laws of the United
16 States; and

17 “(C) it is exempt from any liability for prejudg-
18 ment interest.”.

19 SEC. 209. The opening clause of subsection (a) of sec-
20 tion 66 of title 2 of the Panama Canal Code is amended to
21 read as follows:

22 “(a) Subject to the Government Corporation Control
23 Act (31 U.S.C., sec. 841 et seq.), and to the Panama Canal
24 Treaty of 1977 and related agreements, the Panama Canal
25 Commission may:”.

1 SEC. 210. Sections 67 and 73 of title 2 of the Panama
2 Canal Code are repealed. Section 68 of that title is amended
3 to read as follows:

4 “SEC. 68. ASSETS AND LIABILITIES.—(a) Property
5 and other assets of the Panama Canal Company and of the
6 Canal Zone Government which are not transferred to other
7 United States Government agencies or to the Republic of
8 Panama, or otherwise disposed of, shall be the property and
9 assets of the Panama Canal Commission from and after the
10 effective date, and except as otherwise provided by law, the
11 Commission shall assume the liabilities of the Panama Canal
12 Company and Canal Zone Government then outstanding.

13 “(b) The Commission may depreciate the Panama
14 Canal, its complementary works, installations and equipment,
15 and all other property and assets of the Commission, and
16 may amortize over the life of the Panama Canal Treaty of
17 1977 the right to use certain assets such as housing made
18 available to the United States under that Treaty and related
19 agreements.

20 “(c) The assets and liabilities referred to in this section
21 shall be deemed to have been accepted and assumed by the
22 Commission without the necessity of any act on the part
23 of the Commission except as otherwise stipulated by sec-
24 tion 62 of this title.”.

1 SEC. 211. Section 1331 of title 2 of the Panama Canal
2 Code is amended to read as follows:

3 "SEC. 1331. REGULATIONS GOVERNING NAVIGATION,
4 TRANSITING AND PILOTAGE.—The Commission may pre-
5 scribe, and from time to time amend, regulations governing:

6 "(1) the navigation of the waters of the Panama
7 Canal and areas adjacent thereto including the ports of
8 Balboa and Cristobal;

9 "(2) the passage and control of vessels through the
10 Panama Canal or any part thereof, including the locks
11 and approaches thereto; and

12 "(3) pilotage in the Canal or the approaches there-
13 to through the adjacent waters."

14 SEC. 212. FUNDS AND ACCOUNTS.—(a) Section 231
15 of title 2 of the Panama Canal Code is repealed.

16 (b) Section 232 of title 2 of the Panama Canal Code
17 is amended to read as follows:

18 "SEC. 232. FURNISHING OF SERVICES; REIMBURSE-
19 MENTS.—(a) The Department of Defense shall reimburse
20 the Panama Canal Commission for amounts expended by the
21 Commission in maintaining defense facilities in standby con-
22 dition for the Department of Defense.

23 "(b) Notwithstanding any other law, appropriations
24 of the Department of Defense, or such other agency or agen-

1 cies as may be designated for this purpose by the President,
2 are made available for conducting the educational and health
3 care activities, including kindergartens and college, formerly
4 carried out by the Canal Zone Government, and for pro-
5 viding the services related thereto to the categories of per-
6 sons formerly served thereby. Amounts so expended for
7 furnishing services to employees of other agencies and their
8 dependents, less amounts payable by such persons, shall be
9 fully reimbursable to the agency furnishing the services.
10 The appropriations or funds of the agency bearing the cost
11 of the compensation of the employee concerned are made
12 available for such reimbursements. In addition, the appro-
13 priations or funds of agencies conducting operations in the
14 Republic of Panama are made available for provision of
15 health care services to elderly or disabled persons who were
16 eligible for such services prior to the effective date.”.

17 (c) Section 233 of title 2 of the Panama Canal Code
18 is amended by striking the terms “Canal Zone Government
19 or the Panama Canal Company” and by inserting in their
20 place the term “Panama Canal Commission”.

21 (d) Section 234 of title 2 of the Panama Canal Code
22 is amended by striking the term “Canal Zone” and by
23 inserting in its place the term “Panama Canal Commission”.

24 (e) Section 235 of title 2 of the Panama Canal Code

1 is amended by striking the term "Canal Zone Government
2 and the Panama Canal Company" and by inserting in its
3 place the term "Panama Canal Commission".

4 SEC. 213. PUBLIC PROPERTY AND PROCUREMENT.—

5 (a) Section 371 of title 2 of the Panama Canal Code is re-
6 pealed.

7 (b) Section 372 of title 2 of the Panama Canal Code is
8 amended to read as follows:

9 "SEC. 372. TRANSFERS AND CROSS-SERVICING BE-
10 TWEEN AGENCIES.—(a) In the interest of economy and
11 maximum efficiency in the utilization of Government prop-
12 erty and facilities, there are authorized to be transferred be-
13 tween departments and agencies, with or without exchange
14 of funds, all or so much of the facilities, buildings, struc-
15 tures, improvements, stock, and equipment of their activities
16 located in the Republic of Panama as may be mutually agreed
17 upon by the departments and agencies involved and ap-
18 proved by the President of the United States or his designee.
19 With respect to transfers without exchange of funds, trans-
20 fers to or from the Panama Canal Commission are subject
21 to section 62 of this title, as amended.

22 "(b) The Panama Canal Commission and other agen-
23 cies of the United States may enter into cross-servicing
24 agreements for the use of facilities, furnishing of services,
25 or performance of functions."

CHAPTER 2.—TOLLS

SEC. 230. Section 411 of title 2 of the Panama Canal Code is amended to read as follows:

“SEC. 411. PRESCRIPTION OF MEASUREMENT RULES AND TOLLS.—(a) The Panama Canal Commission may prescribe, and from time to time change:

“(1) the rules for the measurement of vessels for the Panama Canal; and

“(2) subject to section 412 of this title, the tolls that shall be levied for the use of the Canal.

“(b) The Commission shall give three months’ notice, by publication in the Federal Register, of proposed changes in basic rules of measurement or in rates of tolls, during which period a public hearing shall be conducted. Changes in basic rules of measurement and changes in rates of tolls shall be subject to and shall take effect upon the approval of the President of the United States, whose action in such matters shall be final.”.

SEC. 231. In order to insure that the rates of tolls in effect on the effective date are adequate to meet the requirements of section 412 of title 2 of the Panama Canal Code, as amended by section 232 of this Act, the Panama Canal Company is authorized, in advance of that date, to change the rates, effective on the effective date, such change to be subject to the approval of the President whose action in the

1 matter shall be final. If and to the extent that time permits,
2 the Company shall give three months' notice, by publication
3 in the Federal Register, of such proposed changes in rates of
4 tolls, during which period a public hearing shall be con-
5 ducted. This section shall become effective upon the date of
6 enactment of this Act.

7 SEC. 232. BASES OF TOLLS.—(a) Subsection (b) of
8 section 412 of title 2 of the Panama Canal Code is amended
9 to read as follows:

10 “(b) Tolls shall be prescribed at rates calculated to
11 cover as nearly as practicable all anticipated costs of main-
12 taining and operating the Panama Canal, together with the
13 facilities and appurtenances related thereto, including de-
14 preciation of assets, amortization of use rights, and the pay-
15 ments to Panama pursuant to paragraphs 4 (a) and 4 (b) of
16 Article XIII of the Panama Canal Treaty of 1977. In deter-
17 mining the rates of tolls, there may also be taken into account
18 unrecovered past costs, funding required to establish or main-
19 tain a capital reserve account programmed to fund require-
20 ments for plant replacement, expansion, and improvements,
21 and the necessity of establishing reserves for the purpose of
22 matching revenues with expenses during the period projected
23 for a given toll rate to remain in effect.”.

24 (b) Subsection (d) of section 412 of title 2 of the
25 Panama Canal Code is amended by deleting the words “of

1 articles XVIII and XIX of the convention between the
2 United States and Panama concluded on November 18,
3 1903, and", by inserting a comma in place of the period at
4 the end of the subsection, and by adding thereafter "and of
5 Articles II, III, and VI of the Treaty Concerning the Per-
6 manent Neutrality and Operation of the Panama Canal, be-
7 tween the United States of America and the Republic of
8 Panama, signed September 7, 1977."

9 CHAPTER 3. CLAIMS

10 SEC. 260. Chapter 11 of title 2 of the Panama Canal
11 Code is amended as follows:

12 (a) The title of the chapter is amended to read, "Claims
13 Arising from Operation of Canal".

14 (b) Section 271 of title 2 of the Panama Canal Code
15 is repealed.

16 (c) The headings of subchapters I and II are deleted.

17 (d) Section 291 of title 2 of the Panama Canal Code is
18 amended as follows:

19 (1) The period at the end of the first sentence is
20 changed to a comma, and the following language is
21 added: "unless it is established that the injury was not
22 proximately caused by the negligence or fault of any
23 of its officers or employees acting within the scope of his
24 employment and in the line of his duties in connection
25 with the operation of the Canal."

1 (2) In the fourth sentence, the words "the side"
2 are amended to read "any portion of the hull".

3 (e) Section 293 of title 2 of the Panama Canal Code is
4 amended to read as follows:

5 "SEC. 293. MEASURE OF DAMAGES.—(a) In deter-
6 mining the amount of the award of damages for injuries to a
7 vessel for which the Panama Canal Commission is deter-
8 mined to be liable, there may be included:

9 "(1) actual or estimated cost of repairs;

10 "(2) charter hire actually lost by the owners, or
11 charter hire actually paid, depending upon the terms of
12 the charter party, for only the time the vessel is actually
13 undergoing repairs, on drydock or otherwise;

14 "(3) maintenance of the vessel and wages of the
15 crew, if they are found to be actual additional expenses
16 or losses incurred outside of the charter hire, for only the
17 time the vessel is actually undergoing repairs, on drydock
18 or otherwise; and

19 "(4) except as prohibited by subsection (b) of
20 this section, or by any other provision of law, other
21 expenses which are definitely and accurately shown to
22 have been incurred necessarily and by reason of the
23 accident or injuries.

24 "(b) Agent's fees or commissions, general average ex-
25 penses, attorney's fees, bank commissions, port charges or

21

1 other incidental expenses of similar character, or any items
2 which are indefinite, indeterminable, speculative, or con-
3 jectural may not be allowed.

4 “(c) The Commission shall be furnished such vouchers,
5 receipts, or other evidence as may be necessary in support of
6 any item of a claim. If a vessel is not operated under charter
7 but by the owner directly, evidence shall be secured if avail-
8 able as to the sum for which vessels of the same size and
9 class can be chartered in the market. If the charter value
10 cannot be determined, the value of the use of the vessel to its
11 owners in the business in which it was engaged at the
12 time of the injuries shall be used as a basis for estimating the
13 damages for the vessel’s detention; and the books of the
14 owners showing the vessel’s earnings about the time of the
15 accident or injuries shall be considered as evidence of prob-
16 able earnings during the time of detention. If the books are
17 unavailable, such other evidence shall be furnished as may
18 be necessary.”.

19 (f) Section 294 of title 2 of the Panama Canal Code
20 is amended by deleting the word “or” in paragraph (5), by
21 renumbering the present paragraph (6) as paragraph (7),
22 and by inserting a new paragraph (6) reading as follows:
23 “(6) time necessary for investigation of marine accidents;
24 or”.

25 (g) Section 296 of title 2 of the Panama Canal Code

1 is amended by deleting the words "United States District
2 Court for the District of the Canal Zone" in the first sentence
3 and inserting in lieu thereof the words "United States Dis-
4 trict Court for the Eastern District of Louisiana".

5 (h) The present section 297 of title 2 of the Panama
6 Canal Code is designated as subsection (a), and a new sub-
7 section (b) is added to read as follows:

8 " (b) Lack of knowledge on the part of the master,
9 officers, crew, or passengers that an accident giving rise to
10 a claim under this chapter has occurred does not excuse non-
11 compliance with the requirements of this section."

12 (i) A new section 298 of title 2 of the Panama Canal
13 Code is added, to read as follows:

14 "SEC. 298. TIME FOR PRESENTING CLAIM AND COM-
15 MENCING ACTION.—A claim against the Commission under
16 this chapter shall be forever barred unless it is presented in
17 writing to that agency within two years after such claim
18 accrues or unless action is begun within one year after the
19 date of mailing of notice of final decision on the claim by the
20 Commission."

21 (j) A new section 299 of title 2 of the Panama Canal
22 Code is added, to read as follows:

23 "SEC. 299. BOARD OF LOCAL INSPECTORS.—(a) There
24 is established a Board of Local Inspectors of the Panama

1 Canal Commission which shall perform, in accordance with
2 regulations prescribed by the Commission—

3 “(1) the investigations called for by section 297
4 of this chapter; and

5 “(2) such other duties in matters of a marine char-
6 acter as it may be assigned by the Commission.

7 “(b) The Commission shall, by regulation, designate
8 the members of the Board and establish procedures by which
9 the Board carries out its functions.

10 “(c) In conducting the investigations provided for by
11 subsection (a) of this section, members of the Board may
12 summon witnesses, administer oaths and require the pro-
13 duction of books and papers necessary thereto.”.

14 TITLE III—EMPLOYEES AND POSTAL MATTERS

15 CHAPTER 1.—EMPLOYMENT SYSTEM

16 SEC. 301. (a) Sections 101, 102, 122, 123, 147, and
17 154 of title 2 of the Panama Canal Code are repealed.

18 (b) Section 103 of title 2 of the Panama Canal Code
19 is amended by striking the term “Canal Zone Government,
20 Panama Canal Company” and inserting in lieu thereof the
21 term “Panama Canal Commission”, and by redesignating
22 that section as section 122 of that title and code.

23 SEC. 302. Section 141 of title 2 of the Panama Canal
24 Code is amended as follows:

1 (a) The definition of the word "department" is
2 amended to read as follows: "'department' means (i) the
3 Panama Canal Commission, and (ii) an executive agency
4 (within the meaning of section 105 of title 5 of the United
5 States Code) which makes an election under section 142 (b)
6 of this chapter;".

7 (b) The definition of the word "position" is amended
8 to read as follows: "'position' means those duties and re-
9 sponsibilities of a civilian nature under the jurisdiction of
10 a department which are performed in the Republic of
11 Panama.".

12 SEC. 303. Section 142 of title 2 of the Panama Canal
13 Code is amended by redesignating subsection (b) thereof
14 as subsection (c), and by striking the caption and subsection
15 (a) thereof and inserting in their place the following:

16 "SEC. 142. PANAMA CANAL EMPLOYMENT SYSTEM.—

17 (a) The Panama Canal Commission shall conduct its wage
18 and employment practices in accordance with a Panama
19 Canal Employment System which shall be established in
20 accordance with—

21 "(1) the principles established in the Panama
22 Canal Treaty of 1977 and related agreements, and with
23 the provisions of this chapter and other applicable law;
24 and

25 "(2) regulations promulgated by, or under the

1 authority of, the President in accordance with this
2 chapter and taking into account any recommendation
3 of the Panama Canal Commission.

4 “(b) The head of an executive agency other than the
5 Panama Canal Commission may elect in whole or in part
6 to have the Panama Canal Employment System made ap-
7 plicable to personnel of his agency in the Republic of
8 Panama.”.

9 SEC. 304. Notwithstanding other provisions of this chap-
10 ter, the provisions of subchapter III of chapter 7 of title 2
11 of the Panama Canal Code establishing the Canal Zone Merit
12 System, and the administrative regulations promulgated
13 thereunder, shall continue in effect until such time as the
14 Panama Canal Employment System has been established
15 pursuant to section 303 of this Act.

16 SEC. 305. Section 144 of title 2 of the Panama Canal
17 Code is amended by deleting subsection (d) thereof. Section
18 146 is amended to read as follows:

19 “SEC. 146. RECRUITMENT AND RETENTION REMU-
20 NERATION.—In addition to basic compensation, additional
21 remuneration in such amounts as the head of the department
22 concerned determines, may be paid, as overseas recruitment
23 and retention differentials, to (a) persons employed by the
24 Panama Canal Company, Canal Zone Government or a
25 department in the Canal Zone prior to the effective date,

1 and (b) persons thereafter recruited outside of Panama
2 for a position in the Republic of Panama. Additional re-
3 munerations prescribed under this section may not exceed by
4 more than 25 per centum the rate of basic compensation
5 for the same or similar work performed in the continental
6 United States by employees of the Government of the
7 United States.”.

8 SEC. 306. Title 2 of the Panama Canal Code is amended
9 by adding a new section 147 to read as follows:

10 “SEC. 147. TRANSFER OF FEDERAL EMPLOYEES TO
11 PANAMA CANAL COMMISSION.—The head of any Federal
12 agency, including the United States Postal Service, is author-
13 ized to enter into agreements for the transfer or detail of that
14 agency’s employees, serving under permanent appointment,
15 to the Panama Canal Commission. Under regulations pre-
16 scribed by the Civil Service Commission, any employee so
17 transferred or detailed shall, upon completion of his tour of
18 duty with the Commission, be entitled to reemployment with
19 the agency from which he was transferred or detailed with-
20 out loss of pay, seniority or other rights or benefits to which
21 he would have been entitled had he remained on the rolls of
22 that agency.”.

23 SEC. 307. Section 149 of title 2 of the Panama Canal
24 Code is amended to read as follows:

1 “SEC. 149. MERIT AND OTHER EMPLOYMENT RE-
2 QUIREMENTS.—(a) Subject to this subchapter, the Presi-
3 dent may, from time to time and taking into account any
4 recommendation of the Panama Canal Commission, amend
5 or modify the provisions of the Panama Canal Employment
6 System, including provisions relating to selection for appoint-
7 ment, reappointment, reinstatement, re-employment, and re-
8 tention, with respect to positions, employees, and individuals
9 under consideration for appointment to positions, established
10 by regulations under section 142 of this chapter.

11 “(b) The Panama Canal Employment System shall:

12 “(1) subject to and as limited by the Panama
13 Canal Treaty of 1977 and related agreements, be based
14 on the merit of the employee or individual and upon his
15 qualifications and fitness to hold the position concerned;

16 “(2) conform generally to policies, principles, and
17 standards for the competitive civil service of the Govern-
18 ment of the United States; and

19 “(3) include provision for appropriate interchange,
20 between the Panama Canal Employment System and
21 the competitive civil service of the Government of the
22 United States, of citizens of the United States employed
23 by the Government of the United States.”.

24 SEC. 308. Section 155 of title 2 of the Panama Canal

1 Code is amended by redesignating subsection (b) thereof
2 as subsection (c), and by inserting in lieu of subsection (a)
3 thereof the following:

4 “(a) The President shall issue regulations necessary
5 and appropriate to carry out the provisions and accomplish
6 the purposes of this subchapter and, in the event of any
7 election under section 142 (b), coordinate the policies and
8 activities under this subchapter of the departments involved.

9 “(b) In order to assist in carrying out his coordination
10 responsibility under subsection (a) and in implementing
11 the provisions of the Panama Canal Treaty of 1977 and re-
12 lated agreements relating to recruitment, examination, de-
13 termination of qualification standards and similar matters,
14 the President may establish, as the successor to the Canal
15 Zone Central Examining Office, an office which shall be an
16 entity within the Panama Canal Commission.”.

17 SEC. 309. Subsection (a) of section 201 of title 2 of the
18 Panama Canal Code is amended by deleting the words
19 “Governor of the Canal Zone and President of the Panama
20 Canal Company, or as Lieutenant Governor of the Canal
21 Zone and Vice President of the Panama Canal Company,”
22 and inserting in lieu thereof the words “Administrator or
23 Deputy Administrator of the Panama Canal Commission.”.

1 CHAPTER 2. CONDITIONS OF EMPLOYMENT, PLACEMENT,
2 AND RETIREMENT

3 SEC. 321. Title 2 of the Panama Canal Code is amended
4 by adding a new section 202 reading as follows:

5 "SEC. 202. TRANSFERRED EMPLOYEES.—With respect
6 to employees of the Panama Canal Company or Canal Zone
7 Government who are transferred to employment with the
8 Panama Canal Commission or other United States Govern-
9 ment agencies in the Republic of Panama, the following
10 terms and conditions of employment shall be generally no
11 less favorable, from and after the date of exchange of instru-
12 ments of ratification of the Panama Canal Treaty of 1977,
13 than the terms and conditions of employment with the Pan-
14 ama Canal Company and Canal Zone Government immedi-
15 ately prior to that date: Wage rates; tropical differential;
16 premium pay and night differential; reinstatement and res-
17 toration rights; injury and death compensation benefits;
18 leave and travel, except as modified to provide equity with
19 other employees within the agency to which the employee
20 is transferred; transportation and repatriation benefits; group
21 health and life insurance; reduction in force rights; an em-
22 ployee grievance system, and the right to appeal adverse and
23 disciplinary actions as well as position classification actions;

1 veteran's preference eligibility; holidays; saved pay provi-
2 sions; and severance pay benefits.”.

3 SEC. 322. Title 2 of the Panama Canal Code is amended
4 by adding a new section 203 reading as follows:

5 “SEC. 203. PLACEMENT.—(a) A United States citizen
6 who, immediately preceding the date of exchange of instru-
7 ments of ratification of the Panama Canal Treaty of 1977
8 was an employee of the Panama Canal Company or Canal
9 Zone Government, who separates or is scheduled to separate
10 on that date or anytime thereafter throughout the life of the
11 Panama Canal Treaty of 1977 for any reason other than
12 misconduct or delinquency, and who is not placed in another
13 appropriate position with the United States Government in
14 the Republic of Panama shall, upon the employee's request,
15 be accorded appropriate placement to vacancies with the
16 United States Government in the United States.

17 “(b) A United States citizen who, immediately preced-
18 ing the date of exchange of instruments of ratification of the
19 Panama Canal Treaty of 1977 was an employee of an agency
20 of the United States Government in the Canal Zone other
21 than the Panama Canal Company or Canal Zone Govern-
22 ment, whose position is eliminated as the result of imple-
23 menting the Panama Canal Treaty of 1977, and who is not
24 placed in another appropriate position with the United States
25 Government in the Republic of Panama shall, upon the em-

1 ployee's request, be accorded the placement assistance pro-
2 vided for in subsection (a).

3 “(c) The United States Civil Service Commission shall
4 develop and administer a Federal Government-wide place-
5 ment program for all eligible employees who request place-
6 ment assistance under this section.”.

7 SEC. 323. Title 2 of the Panama Canal Code is amended
8 by adding a new section 204 to read as follows:

9 “SEC. 204. EDUCATIONAL TRAVEL BENEFITS.—De-
10 pendants of United States citizen employees of the Panama
11 Canal Commission who are eligible for educational travel
12 benefits under regulations issued by the Commission shall
13 be entitled to one round trip per year for undergraduate
14 studies in the United States until they reach their 23rd
15 birthday.”.

16 SEC. 324. ADJUSTMENT OF COMPENSATION.—United
17 States citizen employees of the Panama Canal Commission
18 shall be paid an allowance to offset the increased cost of
19 living that may result from the withdrawal of the eligibility
20 of such employees and their dependents to use military postal
21 services, sales stores and exchanges five years after the
22 date of entry into force of the Panama Canal Treaty of 1977.
23 The amount of the additional compensation shall be deter-
24 mined by the Panama Canal Commission.

1 SEC. 325. EARLY RETIREMENT ELIGIBILITY.—Section
2 8336 of title 5 of the United States Code is amended:

3 (1) by redesignating subsection (c) as subsection
4 (c) (1) and adding the following new paragraph “(2)
5 A law enforcement officer or firefighter employed by the
6 Panama Canal Company or the Canal Zone Government
7 immediately prior to the date of exchange of instru-
8 ments of ratification or entry into force of the Panama
9 Canal Treaty of 1977, who is separated from the service
10 prior to January 1, 2000, and, upon separation, meets
11 the age and service requirements in paragraph (1), or
12 who is separated within 2 years prior to meeting the
13 age and service requirements in paragraph (1) is en-
14 titled to an annuity.”.

15 (2) by redesignating subsection (h) as subsection
16 (k) and inserting the following new subsections (h),
17 (i), and (j) :

18 “(h) An employee of the Panama Canal Commission
19 or of an Executive agency conducting operations in the
20 Canal Zone or Republic of Panama, who is separated from
21 the service prior to January 1, 2000—

22 “(1) involuntarily, as a result of the implementa-
23 tion of the Panama Canal Treaty of 1977, except by
24 removal for cause on charges of misconduct or de-
25 linquency, after completing 20 years of service;

1 “(2) voluntarily after completing 25 years of serv-
2 ice or after becoming age 50 and completing 20 years of
3 service; or

4 “(3) involuntarily, as a result of the implementa-
5 tion of the Panama Canal Treaty of 1977, except by re-
6 moval for cause on charges of misconduct or delinquency,
7 or voluntarily within 2 years prior to meeting the age
8 and/or service requirements in paragraph (2) is en-
9 titled to an annuity if he—

10 “(A) was employed by the Canal Zone Gov-
11 ernment or the Panama Canal Company immedi-
12 ately prior to the date of exchange of instruments of
13 ratification or entry into force of the Panama Canal
14 Treaty of 1977; and

15 “(B) has been continuously employed by the
16 Panama Canal Commission or by an Executive
17 agency conducting operations in the Canal Zone or
18 the Republic of Panama since the date of exchange
19 of instruments of ratification of the Panama Canal
20 Treaty of 1977 or its entry into force.

21 “(i) An employee of the Panama Canal Commission
22 or of an Executive agency conducting operations in the
23 Canal Zone or Republic of Panama, who is separated from
24 the service as a result of the implementation of the Panama
25 Canal Treaty of 1977, prior to January 1, 2000—involuntar-

1 ily, except by removal for cause on charges of misconduct
2 or delinquency—

3 “(1) after completing 20 years of service; or

4 “(2) within 2 years prior to meeting the age and/
5 or service requirements in paragraph (2) of subsection
6 (h) of this section is entitled to an annuity if he—

7 “(A) was employed in the Canal Zone by
8 an Executive agency other than the Panama Canal
9 Company or the Canal Zone Government immedi-
10 ately prior to the date of exchange of instruments
11 of ratification or entry into force of the Panama
12 Canal Treaty of 1977; and

13 “(B) has been continuously employed by the
14 Panama Canal Commission or an Executive agency
15 conducting operations in the Canal Zone or the Re-
16 public of Panama since the exchange of instruments
17 of ratification of the Panama Canal Treaty of 1977
18 or its entry into force.

19 “(j) For the purpose of subsections (h) and (i) of
20 this section, ‘Executive agency’ includes the Administrative
21 Office of the United States Courts and the Smithsonian
22 Institution.”.

23 SEC. 326. EARLY RETIREMENT COMPUTATION.—Sec-
24 tion 8339 of title 5 of the United States Code is amended—

1 (1) by inserting in subsection (f), immediately
2 after “subsections (a)–(e)”, the following: “and (n)”;

3 (2) by inserting in subsection (i), immediately
4 after “subsections (a)–(h)”, the following: “and (n)”;

5 (3) by inserting in subsections (j) and (k) (1),
6 immediately after “subsections (a)–(i)” each time it
7 appears, the following: “and (n)”;

8 (4) by inserting in subsection (l), immediately
9 after “subsections (a)–(k)”, the following “and (n)”;

10 (5) by inserting in subsection (m), immediately
11 after “subsections (a)–(e)”, the following “and (n)”;

12 and

13 (6) by adding at the end thereof the following new
14 subsections “(n), (o), and (p)”:

15 “(n) The annuity of an employee retiring under this
16 subchapter who was employed by the Panama Canal Com-
17 pany or Canal Zone Government immediately prior to the
18 entry into force of the Panama Canal Treaty of 1977, who
19 continues in employment with the Panama Canal Com-
20 mission, or with another Executive agency in the Republic
21 of Panama is computed with respect to the period of that
22 service performed on a continuous basis after the entry into
23 force of the Panama Canal Treaty of 1977 by multiplying—

24 “(A) $2\frac{1}{2}$ percent of the employee’s average pay by

1 so much of such service as does not exceed 20 years;
2 plus,

3 “(B) 2 percent of the employee’s average pay mul-
4 tiplied by so much of such service as exceeds 20 years.

5 “(o) The annuity computed under subsection (n) of
6 this section for an employee who was employed as a law
7 enforcement officer or firefighter shall be increased by \$8
8 for each full month of such service in the Republic of Pan-
9 ama after the entry into force of the Panama Canal Treaty of
10 1977. This increase in annuity shall not be paid with re-
11 spect to service performed after completion of 20 years as a
12 law enforcement officer or firefighter.”

13 “(p) The annuity computed under this subchapter for
14 an employee who was employed as a law enforcement officer
15 or firefighter by the Panama Canal Company or the Canal
16 Zone Government immediately prior to the date of exchange
17 of instruments of ratification or entry into force of the Pan-
18 ama Canal Treaty of 1977, who does not qualify for retire-
19 ment under section 8336 (c) of this title shall be increased
20 by \$12 for each full month of such service, prior to the
21 entry into force of the Panama Canal Treaty of 1977. This
22 increase in annuity shall not be paid with respect to service
23 performed after completion of 20 years as a law enforcement
24 officer or firefighter.”.

1 SEC. 327. COURT, CANAL ZONE CIVILIAN PERSONNEL
2 POLICY COORDINATING BOARD, AND RELATED EMPLOY-
3 EES.—For the purposes of sections 202, 203, and 204 of
4 title 2 of the Panama Canal Code, as amended by sections
5 321, 322, and 323 of this Act, and sections 325–326 of
6 this Act, the district judge, the clerk, the court reporter, and
7 other employees of the United States District Court for the
8 District of the Canal Zone, the United States Attorney for
9 the District of the Canal Zone and the Assistant United
10 States Attorneys and their clerical assistants, and the United
11 States Marshal for the District of the Canal Zone and his
12 deputies and clerical assistants; the Executive Director of
13 the Canal Zone Civilian Personnel Policy Coordinating
14 Board, the Manager, Central Examining Office, and their
15 deputies and clerical assistants shall be treated the same
16 as employees of the Panama Canal Commission.

17 SEC. 328. (a) Chapters 81 (Compensation for Work
18 Injuries), 83 (Retirement), 87 (Life Insurance), and 89
19 (Health Insurance) of title 5 of the United States Code
20 are inapplicable to persons who are not citizens of the United
21 States, who are hired by the Panama Canal Commission
22 after the effective date and who are covered by the Social
23 Security System of the Republic of Panama pursuant to the
24 Panama Canal Treaty of 1977 and related agreements.

1 (b) In section 8701 of title 5 of the United States
2 Code, the definition of "employee" in subsection (a) is
3 amended by revising paragraph (B) to read as follows:

4 " (B) an employee who is not a citizen or national
5 of the United States and whose permanent duty station
6 is outside the United States, unless such person was
7 an employee for the purpose of this chapter on the day
8 before the effective date by virtue of service with a Fed-
9 eral agency in the Canal Zone."

10 (c) In section 8901 of title 5 of the United States
11 Code, the definition of employee in subsection (1) is amend-
12 ed by revising paragraph (ii) to read as follows:

13 " (ii) an employee who is not a citizen or national
14 of the United States and whose permanent duty station
15 is outside the United States unless such person was an
16 employee for the purpose of this chapter on the day
17 before the effective date by virtue of service with a
18 Federal agency in the Canal Zone."

19 SEC. 329. NON-UNITED STATES CITIZEN RETIRE-
20 MENT UNDER SPECIAL TREATY PROVISIONS.—(a) Under
21 such regulations as the President may prescribe, there shall
22 be paid to the Social Security System of the Republic of
23 Panama, out of funds deposited in the Treasury of the United
24 States to the credit of the Civil Service Retirement Fund
25 under section 8334 (a) (2) of title 5 of the United States

1 Code, such sums of money as may be necessary to aid in
2 the purchase of a retirement equity in that System for each
3 person who is separated from employment with the Panama
4 Canal Company, the Canal Zone Government, or the Pan-
5 ama Canal Commission, as the result of the implementation
6 of the Panama Canal Treaty of 1977 and related agreements,
7 and becomes employed under the Social Security System of
8 the Republic of Panama through the transfer of a function
9 or activity to the Republic of Panama from the United
10 States or through a job placement assistance program, pro-
11 vided such person—

12 (1) has been credited with at least five years of
13 Federal service under the United States Civil Service
14 Retirement System;

15 (2) is not eligible for an immediate retirement an-
16 nuity, and does not elect a deferred annuity under the
17 United States Civil Service Retirement System; and

18 (3) elects to withdraw the entire amount of his
19 contributions to the United States Civil Service Re-
20 tirement System and transfer it to the Social Security
21 System of the Republic of Panama pursuant to the spe-
22 cial regime referred to in paragraph 3 of Article VIII of
23 the Agreement in Implementation of Article III of the
24 Panama Canal Treaty of 1977.

25 (b) The sums of money made available under sub-

1 section (a) shall not exceed, in any case, the amount of the
2 employee contribution withdrawn from the fund and paid
3 over to the Panamanian Social Security System.

4 (c) (1) Pursuant to Paragraph 2 (b) of Annex C to
5 the Agreement in Implementation of Article IV of the
6 Panama Canal Treaty of 1977, the President of the United
7 States, or his designee, is authorized to pay out of the gen-
8 eral funds of the United States Treasury, in accordance
9 with such regulations as the President or his designee may
10 prescribe, such sums of money as may be necessary to pur-
11 chase, or to supplement the purchase of, a retirement equity
12 in the Social Security System of the Republic of Panama
13 for the benefit of each employee of the United States Forces
14 in the Republic of Panama—

15 (A) who is not a citizen of the United States of
16 America;

17 (B) who was employed prior to and is employed
18 upon the effective date of the Panama Canal Treaty of
19 1977 by an instrumentality of the United States Gov-
20 ernment in the Republic of Panama (including, in the
21 case of employment prior to such date, the former Canal
22 Zone) ;

23 (C) who, for any period of his or her employment
24 with that instrumentality of the United States Govern-
25 ment prior to the effective date of the Panama Canal

1 Treaty of 1977 was not covered, on account of such em-
2 ployment, by the Civil Service Retirement System of
3 the United States of America or another retirement sys-
4 tem providing benefits similar to those retirement bene-
5 fits provided by the Social Security System of the
6 Republic of Panama; and

7 (D) whose period of employment referred to in
8 subparagraph (C) above was of such a nature that he
9 or she would have been covered at that time by the
10 Social Security System of the Republic of Panama had
11 such law been applicable.

12 (2) The retirement equity referred to in subparagraph
13 (c) (1) above will cover retroactively, from the effective
14 date of the Panama Canal Treaty of 1977, all periods of
15 employment of such persons with United States Government
16 instrumentalities in the Republic of Panama (including the
17 former Canal Zone) during which such persons were not
18 covered by the Civil Service Retirement System of the
19 United States of America or any other retirement system
20 providing benefits similar to those retirement benefits pro-
21 vided by the Social Security System of the Republic of
22 Panama and during which such persons' employment was of
23 such a nature that he or she would have been covered by the
24 Social Security System of the Republic of Panama had such
25 law been applicable.

1 SEC. 330. (a) Section 6322 (a) of title 5 of the United
2 States Code is amended by deleting the words "the Canal
3 Zone, or", by inserting a comma in place of the period after
4 "the Trust Territory of the Pacific Islands" at the end of
5 the same sentence, and by adding thereafter "or the Repub-
6 lic of Panama."

7 (b) Subchapter III of Chapter 59 of title 5 of the
8 United States Code, pertaining to Overseas Differentials and
9 Allowances, is inapplicable to employees assigned to work
10 in the Republic of Panama for the Panama Canal Commis-
11 sion or an executive agency which makes an election under
12 section 142 (b) of title 2 of the Panama Canal Code.

13 (c) References to the Canal Zone in the following sec-
14 tions of title 5 of the United States Code shall henceforth
15 be deemed to refer to areas in the Republic of Panama used
16 or regulated by the United States pursuant to the Panama
17 Canal Treaty to 1977 and related agreements:

18 (1) section 5595 (a) (2) (iii) ;

19 (2) section 5724a (a) ; and

20 (3) section 8102 (b) .

21 (d) Section 1 (b) of the Act of April 14, 1966 (20
22 U.S.C. 903 (c)) and section 6 (a) of the Act of July 17,
23 1959 (20 U.S.C. 904 (a) (2)) are inapplicable to teachers
24 who are employed by the Canal Zone Government school
25 system immediately prior to the effective date and are trans-

1 ferred to the Department of Defense Overseas Dependent
2 School System.

3 CHAPTER 3.—POSTAL MATTERS

4 SEC. 341. POSTAL SERVICE.—(a) The postal service
5 established and governed by chapter 73 of title 2 of the
6 Panama Canal Code shall be discontinued upon the effective
7 date.

8 (b) The provisions of chapter 73 relating to postal-savings
9 deposits, postal-savings certificates, postal money orders, and
10 the accounting for funds shall continue to apply for the
11 purpose of meeting the obligations of the United States
12 concerning outstanding postal savings and money orders and
13 disposition of funds.

14 (c) The Panama Canal Commission shall take posses-
15 sion of and administer the funds of the postal service and
16 shall assume its obligations. The Commission and the United
17 States Postal Service are authorized to enter into agreements
18 for the transfer of funds or property and the assumption of
19 administrative rights or responsibilities, with respect to the
20 outstanding obligations of the postal service.

21 (d) Mail addressed to the Canal Zone from or through
22 the continental United States may be routed by the United
23 States Postal Service to the military post offices of the United
24 States Forces in the Republic of Panama. Such military post
25 offices shall provide the required directory services and shall

1 accept such mail to the extent permitted under the Panama
2 Canal Treaty of 1977 and related agreements. The Panama
3 Canal Commission is authorized and directed to furnish
4 personnel, records and other services to said military post
5 offices to assure wherever appropriate the proper distribu-
6 tion, rerouting, or return of said mail.

7 (e) (1) The words, "Except as provided in the Canal
8 Zone Code, the", in the second sentence of section 403 (a)
9 of title 39 of the United States Code are revised to read,
10 "The";

11 (2) The words "each post office in the Canal Zone
12 postal service," in section 3402 (a) of title 39 of the United
13 States Code are revised to read "each military post office
14 of the United States Forces in the Republic of Panama" and
15 section 3402 (b) of title 39 of the United States Code is
16 deleted;

17 (3) Section 3682 (b) (5) of title 39 of the United
18 States Code is amended by striking the words "the Caanal
19 Zone and"; and

20 (4) Section 3401 (b) of title 39 of the United States
21 Code is amended by inserting the word "or" before the
22 words "the Virgin Islands" and by striking the words "or
23 the Canal Zone."

1 TITLE IV—COURTS AND RELATED FUNCTIONS

2 SEC. 401. CONTINUATION OF CODE AND OTHER

3 LAWS.—(a) Except as otherwise provided in this Act, the
4 provisions of the Panama Canal Code, as amended, and other
5 laws applicable in the Canal Zone prior to the entry into
6 force of the Panama Canal Treaty of 1977 by virtue of the
7 territorial jurisdiction of the United States in the Canal
8 Zone shall continue in force only for the purpose of the
9 exercise of the authority vested in the United States by that
10 Treaty and related agreements.

11 (b) None of the provisions or laws referred to in sub-
12 section (a) shall henceforth be construed as regulating, or
13 providing authority to regulate, any matter as to which
14 the United States may not exercise jurisdiction under the
15 Panama Canal Treaty of 1977 and related agreements.

16 SEC. 402. JURISDICTION DURING TREATY TRANSITION

17 PERIOD.—(a) The Congress of the United States finds that
18 Article XI of the Panama Canal Treaty of 1977 prescribes
19 certain special provisions governing the jurisdiction of the
20 United States in the Republic of Panama during a transition
21 period of thirty months beginning upon the date the Panama
22 Canal Treaty of 1977 enters into force.

23 (b) Notwithstanding inconsistent provisions of the

1 Panama Canal Code or any other law, the jurisdiction of the
2 district court and magistrates' courts established pursuant
3 to title 3 of the Panama Canal Code shall be limited as pro-
4 vided by Article XI of the Panama Canal Treaty of 1977.

5 (c) For the purposes of the exercise of the aforesaid
6 jurisdiction, the terms "United States citizen employees",
7 "members of the United States Forces", "civilian com-
8 ponent", and "dependents" shall be construed as they
9 are defined in the Panama Canal Treaty of 1977 and related
10 agreements. Similarly, the term "areas and installations
11 made available for the use of the United States" shall be
12 construed to mean (1) the Canal operating areas and hous-
13 ing areas described in Annex A to the Agreement in Im-
14 plementation of Article III of that Treaty, (2) the Ports
15 of Balboa and Cristobal described in Annex B to that Agree-
16 ment, and (3) the Defense Sites and Areas of Military Co-
17 ordination described in Annex A to the Agreement in
18 Implementation of Article IV of that Treaty.

19 SEC. 403. DIVISIONS AND TERMS OF DISTRICT
20 COURT.—(a) The United States District Court for the Dis-
21 trict of the Canal Zone is authorized to conduct its affairs at
22 such places within the areas made available for the use of the
23 United States under the Panama Canal Treaty of 1977 and
24 related agreements, and at such times, as the district judge
25 may designate by rule or order.

1 (b) Sections 2 and 3 of title 3 of the Panama Canal
2 Code are repealed.

3 SEC. 404. TERM OF CERTAIN OFFICES.—Notwithstand-
4 ing the provisions of sections 5, 41, 45 and 82 of title 3 of
5 the Panama Canal Code, the term of office of a district judge,
6 magistrate, United States attorney or United States marshal
7 appointed after the date of enactment of this Act shall extend
8 for a period of 30 months beyond the date the Panama Canal
9 Treaty of 1977 enters into force, and be subject to such ex-
10 tension of time as may be provided for disposition of pending
11 cases by agreement between the United States and the Re-
12 public of Panama pursuant to the last sentence of paragraph
13 7 of Article XI of the Panama Canal Treaty of 1977.

14 SEC. 405. RESIDENCE REQUIREMENTS.—Sections 5
15 (d), 7 (d), 41 (d), and 45 (d) of title 3 of the Panama
16 Canal Code, the second sentence of section 42 of that title,
17 and the second sentence of section 82 (c) of that title, which
18 require that certain court officials reside in the Canal Zone,
19 are repealed.

20 SEC. 406. (a) Section 6 of title 3 of the Panama Canal
21 Code is amended to read as follows:

22 “SEC. 6. SPECIAL DISTRICT JUDGE.—The chief judge
23 of the judicial circuit of which the district court is a part may
24 designate and assign a special district judge, to act when
25 necessary:

1 “(1) during the absence of the district judge;

2 “(2) during the district judge’s disability or dis-
3 qualification, because of sickness or otherwise, to dis-
4 charge his duties, or

5 “(3) when the office of district judge is vacant.”.

6 (b) Each such designation and assignment by the chief
7 judge shall be made in accordance with chapter 13 of title 28
8 of the United States Code, which shall be deemed to apply
9 for such purposes.

10 SEC. 407. MAGISTRATES’ COURTS.—(a) The two
11 magistrates’ courts established pursuant to section 81 of title
12 3 of the Panama Canal Code and existing immediately pre-
13 ceding the date upon which the Panama Canal Treaty of
14 1977 enters into force shall continue in operation for 30
15 months from that date unless discontinued during that period
16 as otherwise provided by this section.

17 (b) During the period referred to in subsection (a),
18 one or both magistrates’ courts, together with the positions of
19 magistrate and constable corresponding thereto, may be
20 abolished by the President or his designee if in his judgment
21 the workload is insufficient to warrant continuance of either
22 or both courts. If one of the courts is so abolished, the re-
23 maining magistrate’s court shall exercise the jurisdiction that
24 otherwise would have been exercised by the abolished court
25 and shall take custody of and administer all its records.

1 (c) If both magistrates' courts are abolished pursuant to
2 subsection (b), the following provisions shall thereafter
3 apply:

4 (1) The district court shall exercise the jurisdic-
5 tion of the magistrates' courts.

6 (2) All records of the magistrates' courts shall be
7 deemed records of the district court.

8 (3) A criminal action that otherwise would have
9 come within the original jurisdiction of the magistrates'
10 courts shall be instituted in the district court by a com-
11 plaint executed pursuant to section 3701 of title 6 of the
12 Panama Canal Code, and the law and rules applicable
13 in the district court shall thereafter apply. All other
14 criminal actions shall be instituted in the district court
15 by the filing in each case of an information pursuant to
16 chapter 213 of title 6 of the Panama Canal Code.

17 (4) The requirement of and procedures for pre-
18 liminary examinations under section 172 of title 3 and
19 sections 3801-3806 of title 6 of the Panama Canal
20 Code shall not apply.

21 SEC. 408. Section 543 of title 3 of the Panama Canal
22 Code is amended to read as follows:

23 "SEC. 543. OATH.—Before receiving a certificate the
24 applicant shall take and subscribe in court an appropriate
25 oath prescribed by the district judge."

1 SEC. 409. TRANSITION AUTHORITY.—Except as ex-
2 pressly provided to the contrary in this Act, in any other
3 statute, in the Panama Canal Treaty of 1977 and related
4 agreements, or by executive order, any authority necessary
5 to the exercise during the transition period of the rights and
6 responsibilities of the United States specified in Article XI
7 of the Panama Canal Treaty of 1977 shall be vested in the
8 Panama Canal Commission.

9 SEC. 410. SPECIAL IMMIGRANTS.—(a) Section 101
10 (a) (27) of the Immigration and Nationality Act (8 U.S.C.
11 1101 (a) (27)) relating to the definition of special immi-
12 grants, is amended—

13 (1) by striking out “or” at the end of subpara-
14 graph (C) and inserting “; or” at the end of subpara-
15 graph (D) ;

16 (2) by inserting after subparagraph (D) the fol-
17 lowing new subparagraph:

18 “(E) an immigrant who is an employee of the
19 Panama Canal Company or Canal Zone Government,
20 who is resident in the Canal Zone on the date of the
21 exchange of instruments of ratification of the Panama
22 Canal Treaty of 1977, and who has performed faithful
23 service for one year, or more, and his accompanying
24 spouse and children.”.

TITLE V—MISCELLANEOUS PROVISIONS

SEC. 501. HEALTH DIRECTOR; HOSPITALS.—(a) In chapter 57 of title 5 of the Panama Canal Code, references to “hospitals”, to the “Health Bureau”, and to the “health director”, shall be deemed to be, respectively, to the hospitals operated by the United States in the Republic of Panama after the effective date, to the organizational unit operating such hospitals, and to the senior official in charge of such hospitals.

(b) In section 4784 of title 6, section 2 of title 7, and sections 32, 35–38 of title 8 of the Panama Canal Code, references to the health director shall be deemed to be to the senior official in charge of the hospitals operated by the United States in the Republic of Panama after the effective date.

SEC. 502. EFFECTIVE DATE.—Except as otherwise provided in sections 231, 321, 322, 325, 404 and 411 of this Act, the provisions of this Act shall take effect upon ratification of the proposed Panama Canal Treaties of 1977.



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

12 APR 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
Washington, D. C. 20515

APR 1 1979
COMMITTEE ON MERCHANT MARINE
AND FISHERIES

Dear Mr. Chairman:

Reference is made to your request to the Secretary of Defense for the views of the Department of Defense on H.R. 454, 96th Congress, a bill "To provide the congressional authorization required by clause 2, section 3, Article IV of the Constitution, for the transfer to Panama of the property of the United States in the Canal Zone; to authorize the appropriations required by clause 7, section 9, Article I of the Constitution, to implement that transfer of United States property, including the transfer of military installations and of cemeteries in which United States veterans are interred, the closing of the Canal Zone courts, and the assumption by the United States Postal Service of the functions of the Canal Zone postal service; to otherwise provide legislatively the authorizations not provided pursuant to clause 2, section 2, Article II of the Constitution which are necessary to implement the Panama Canal Treaty of 1977 and related agreements; and for other purposes." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

H.R. 454 is identical to an Executive Branch draft of implementing legislation, dated March 3, 1978, which has been subsequently amended a number of times. The Department of Defense opposes enactment of H.R. 454.

For the following major reasons, the Department of Defense endorses H.R. 1716, the Administrations updated legislation to implement the Panama Canal Treaty:

H.R. 1716 (sec. 102) exempts the Administrator of the Commission and personnel under his direction from the Ambassador's authority with respect to responsibilities related to the Canal operation but subjects them to the Ambassador's direction in other respects. H.R. 454 has no similar provisions.

Both bills (sec. 203) contain formulas for determining when a surplus is due to Panama under Art. XIII(4)(c). H.R. 1716 specifies one type of cost that is not found in H.R. 454: working capital requirements. Also H.R. 1716 is drafted to reflect generally accepted accounting principles as opposed to an expenditure basis of accounting.

The bills (sec. 212) are similar except that H.R. 1716 makes available funds of the Commission for reimbursements on behalf of its employees and other persons receiving free educational services.

H.R. 1716 (sec. 303) concerning collective bargaining added subsection (c) to sec. 142 of Title 2 of the Panama Canal Code, which exempts U.S. citizens from Title VII, Civil Service Reform Act. H.R. 454 has no similar provision.

H.R. 1716 (sec. 305) adds medical doctors to the group entitled to receive additional remuneration. Otherwise both bills are, with the exception of minor differences, identical.

H.R. 1716 (secs. 310, 322, 325(2)(j), 326(6)(n), and 328(b) and (c)) provides for the granting of the benefits contained in Title III to Smithsonian employees. H.R. 454 has no similar provisions.

Both bills (sec. 322) grant placement rights to U.S. citizen employees. H.R. 1716 refers to separation in accordance with the Office of Personnel Management (OPM) plan called for in the bill; whereas, H.R. 454 refers to separation "during the life of the Treaty." The OPM plan limits the period of time during which an employee may seek such assistance.

Both bills (sec. 329(c)) provide for the purchase of a retirement equity. They differ mainly in terms of type of annuity to be purchased, system in which such annuity is to be purchased, and qualifications of eligible employees for such an annuity.

Both bills (sec. 410) are identical except that H.R. 1716 broadens the group of eligibles to include retirees and provides for certain waivers.

H.R. 1716 (sec. 411) provides for the transfer of Canal Zone Government responsibility over the custody of persons convicted of felonies to the Department of Justice, Bureau of Prisons. H.R. 454 has no similar provisions.

H.R. 1716 (sec. 502) authorizes appropriations for the funding of costs incurred for the disinterment, transportation, and reinterment of the remains of U.S. citizens buried in Corozal Cemetery. H.R. 454 has no similar provisions.

H.R. 1716 (sec. 503) takes effect on the entry into force of the Treaty with exceptions for certain sections which take effect on the date of enactment of the bill. H.R. 454 (sec. 502) is effective upon "ratification" of the Treaty with exceptions being effective also on the date of enactment of the bill. The exceptions in both bills are identical (H.R. 1716 contains 3 additional sections).

Both bills provide the same rights and benefits to Panama Canal Company/Canal Zone Government and Commission employees concerning conditions of employment (sec. 321), placement (sec. 322), early retirement (secs. 325 and 326), and special immigration status (sec. 410).

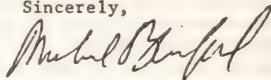
They differ as to dates of employment with those agencies. H.R. 1716 provides that you must be an employee before, on, or after the "effective date" (1 Apr 79) of exchange of instruments of ratifications; whereas, H.R. 454 provides that you must be an employee on the date (16 Jun 78) of exchange of instruments of ratification.

The enactment of this bill will cause no apparent increase in budgetary requirements of the Department of Defense over and above those already submitted through budget channels by the Department of Defense.

The report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,



Michael Blumenfeld
Assistant Secretary of the Army
(Civil Works)



DEPARTMENT OF STATE

Washington, D.C. 20520

MAR 29 1979

Dear Mr. Chairman:

I am responding on behalf of the Secretary to your letter of January 25 requesting the views and recommendations of the Department on H.R. 454.

As you are aware, the Department has prepared legislation (H.R. 1716) which you introduced dealing with the implementation of the Panama Canal Treaty. You have also introduced a bill (H.R. 111) to implement the Treaty which differs in several respects from that prepared by the Administration. I commented in an earlier letter on H.R. 111.

Congressman Hansen's bill is nearly identical to that submitted by the Administration. The only substantive differences between the bills are the following:

1. H.R. 454 contains no provision comparable to Section 102 of H.R. 1716 concerning the authority of the Ambassador.

2. H.R. 454 does not exempt the Panama Canal Commission from certain provisions of Title 5 concerning federal employees. Section 303(c) of H.R. 1716 contains such an exemption.

3. Certain of the provisions of H.R. 1716 pertaining to employment matters are made applicable to the Smithsonian Institute. H.R. 454 does not have a comparable provision.

4. H.R. 454 has no provision comparable to Section 411 of H.R. 1716 concerning the custody of prisoners sentenced by U.S. courts in Panama.

The Honorable

John M. Murphy,
Chairman,Committee on Merchant Marine and Fisheries,
House of Representatives.

5. H.R. 454 does not provide for the implementation of the Randolph (Cemeteries) Reservation.

There are, in addition, a number of minor variances between the two bills. The Administration will be happy to support H.R. 454 if it is amended to include those provisions enumerated above.

The cost of carrying out H.R. 454 is similar to that which will be incurred under H.R. 1716. As witnesses from the Department testified before the Panama Canal Subcommittee on February 15, the Administration is preparing a revised estimate of these costs and will be making that estimate available to the Subcommittee in the near future.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

96TH CONGRESS
1ST SESSION

H. R. 1511

To prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 25, 1979

Mr. HANSEN (for himself, Mr. SYMMS, Mr. CLAUSEN, Mr. BAFALIS, and Mr. DORNAN) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

2

1 That (a) no funds of the United States (whether appropriated
2 or nonappropriated), including any funds under the control of
3 any department, agency, or other instrumentality of the
4 United States (including the Panama Canal Company and the
5 Canal Zone Government), may be used to implement the
6 Panama Canal Treaty of 1977 in any way, either directly or
7 indirectly, or to take any action in preparation for such im-
8 plementation unless the use of such funds for that purpose
9 has been expressly authorized in an appropriation Act en-
10 acted by the Congress after the enactment of this Act.

11 (b) No right, title, or interest of the United States (or of
12 any department, agency, or other instrumentality of the
13 United States, including the Panama Canal Company and the
14 Canal Zone Government) with respect to any real property,
15 or improvements thereon, in the Canal Zone may in any way
16 be transferred (whether by conveyance, relinquishment of
17 control, or any other means) to the Republic of Panama pur-
18 suant to the Panama Canal Treaty of 1977 unless such
19 transfer is expressly authorized by an Act of Congress en-
20 acted after the enactment of this Act.

21 (c) The prohibitions contained in this Act shall apply
22 notwithstanding any other provision of law, including (1) any
23 provision authorizing transfers of funds between accounts, re-
24 programing of funds, use of funds for contingency purposes,
25 or waivers of prohibitions, (2) any provision authorizing

1 transfers or conveyances of property or property interests of
2 the United States, and (3) any provision of the Panama Canal
3 Treaty of 1977 which might be construed to authorize, re-
4 quire, or otherwise provide for, the obligation or expenditure
5 of funds or the transfer of property.

6 (d) Notwithstanding the provisions of the Panama Canal
7 Treaty of 1977, the Panama Canal Company and the Canal
8 Zone Government under the Canal Zone Code of 1977 shall
9 not cease to exist and shall not cease operations with respect
10 to the Panama Canal and the Canal Zone except pursuant to
11 an Act of Congress.

12 (e) As used in this Act, the term "Panama Canal Treaty
13 of 1977" means the Panama Canal Treaty between the
14 United States of America and the Republic of Panama,
15 signed September 7, 1977, and any agreement relating to or
16 entered into in conjunction with that treaty, including any
17 agreement or other arrangement with respect to the furnish-
18 ing of assistance by the United States to or for the Republic
19 of Panama.



DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

12 APR 1979

Honorable John M. Murphy
Chairman, Committee on
Merchant Marine and
Fisheries
House of Representatives

Dear Mr. Chairman:

Reference is made to your request to the Secretary of Defense for views of the Department of Defense on H.R. 1511, 96th Congress, a bill "To prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer."

The Department of the Army is responding on behalf of the Department of Defense concerning the proposed bill. The Department of Defense strongly objects to H.R. 1511. In addition to this general objection, the Department of Defense has the following specific objections and comments:

1. The enactment of H.R. 1511 into law would totally disrupt planning and preparation required of the Department of Defense for the orderly transfer of functions from the Panama Canal Company to the Department of Defense and the turnover of property to the Republic of Panama on entry into force of the Treaty. In addition, the delays implicit in the wording of the bill would deny the Department of Defense the opportunity to prepare adequately to implement United States Treaty obligations.
2. The Army bears considerable responsibility for the execution of Treaty provisions. FY 79 funds are necessary to be prepared to implement the Treaty. Failure to take preparatory actions in FY 79 will jeopardize the Army's capability to assume its new/expanded responsibilities when the Treaty becomes effective. These preparatory actions in FY 79 require the obligation of FY 79 funds. The longer these obligations are prohibited in FY 79 and preparatory actions delayed, the greater the likelihood that the Army will not be able to execute fully Treaty provisions on entry into force of the Treaty.

Honorable John M. Murphy

3. The provisions of this bill, which purport to negate the Treaty as domestic law, would not relieve the United States from its international Treaty obligations to Panama. It is the opinion of the Department of Defense that enactment of H.R. 1511 would be tantamount to default in our Treaty responsibilities and might result in a serious violation of United States international obligation.

The enactment of this bill will cause an increase in budgetary requirements, the fiscal effect of which cannot be determined.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the committee.

Sincerely,



Michael Blumenfeld
Assistant Secretary of the Army
(Civil Works)



CANAL ZONE GOVERNMENT
BALBOA HEIGHTS, CANAL ZONE
OFFICE OF THE GOVERNOR

March 30, 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Murphy:

This is in response to your request of January 30, 1979 for a report on H. R. 1511, a bill "to prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer."

If enacted, H.R. 1511 would --

(a) prohibit the use of any Government funds (whether appropriated or nonappropriated) to implement the Panama Canal Treaty of 1977, or to take "any action in preparation for such implementation", unless funds for those purposes are expressly authorized in a subsequent appropriation act;

(b) prohibit the transfer to the Republic of Panama of any right, title or interest of the United States in any real property or improvements thereon in the Canal Zone pursuant to the said treaty except as expressly authorized by a subsequent act of Congress; and

(c) provide for the continued existence of the Panama Canal Company and Canal Zone Government and require those agencies to continue operations with respect to the Canal and the Canal Zone, except as otherwise provided in an act of Congress.

Honorable John M. Murphy

As you know, the new treaty will enter into force on October 1 of this year. When it does, the Canal Zone, which has existed under United States jurisdiction since its creation in 1904, will be disestablished and the Republic of Panama will assume plenary jurisdiction over that area in accordance with the terms of the treaty. That document requires that, upon entry into force, the present Canal agencies -- the Panama Canal Company and the Canal Zone Government -- cease operations in what is now the Canal Zone; it also states that the United States will carry out its responsibilities to manage, operate and maintain the waterway until the end of the century by means of a new U. S. Government agency called the Panama Canal Commission.

Most of the commercial activities incident to the Canal and to the Government of the Canal Zone, which the Company currently performs, are scheduled for transfer to Panama upon entry into force. Panama will also assume most governmental functions in the Zone, including police and fire protection, traffic management, street maintenance, lighting and cleaning and garbage collection. Finally, Panama will become responsible for operation of the ports of Cristobal and Balboa, located at the northern and southern entrances of the Canal, and the transisthmian Panama Railroad.

I do not believe that it is realistic to expect that the United States and Panama will be able to accomplish the transfer of responsibilities called for by the treaty without extensive planning. As I noted in my recent testimony before the Panama Canal Subcommittee, formal planning sessions between the Canal agencies and the Government of Panama began in early 1978. In the summer of that year, specific guidelines were developed for the formalization of the Binational Working Group which is generally considered to be the predecessor to the Coordinating Committee called for by the treaty documents. Joint working subcommittees, whose membership is made up of representatives from our two countries, were also established.

At the present time, the Joint Subcommittees are completing their first planning phase, which includes the finalization of a schedule for the accomplishment of actions necessary for treaty implementation. Upon completion of staff review of the planning documents by the Canal organization, the U.S. Southern Command and the American Embassy in Panama, the plans will be submitted to the Binational Working Group for final approval.

Honorable John M. Murphy

Enactment of H. R. 1511 would require that these planning efforts cease. In my estimation, such a turn of events would effectively preclude the possibility of entering into the treaty period in a posture approaching preparedness. The serious disruption of Canal operations, which would certainly result from the cessation of implementation planning, would not be in the interest of either country and inevitably would be detrimental to world shipping.

With regard to the bill's prohibition against transferring property to Panama pursuant to the new treaty without express statutory authorization, it should be noted that the Attorney General of the United States has taken the position that the treaty, in and of itself, is all that is required to effect the transfer. The Senate, in approving the pact without an amendment requiring action by the entire Congress prior to the transfer of such property, has concurred in this view.

Finally, the provision of H. R. 1511 which seeks to continue the present Canal agencies, and to prohibit them from ceasing operations with respect to the waterway and the Zone, except as otherwise provided in an act of Congress, appears to us to be partially unnecessary and partially anomalous. Although, under the self-executing provisions of paragraph 10 of Article III of the new treaty, the Panama Canal Company and Canal Zone Government will be required, upon entry into force, to cease operations "within the territory of the Republic of Panama which formerly constituted the Canal Zone," those agencies will continue to exist until such time as they are disestablished by amendment of the Canal Zone Code. Accordingly, that portion of H.R. 1511 which would provide for their continued existence until such time as Congress eliminates them appears unnecessary.

It also seems clear that the bill's requirement that the Company-Government continue to operate the Canal and the Canal Zone until Congress otherwise provides conflicts with paragraph 10 of Article III of the treaty, referred to above. Moreover, since the Administration and the Senate have taken the view that the Canal Zone will be disestablished on October 1, 1979 -- by virtue of the termination of the 1903 treaty between Panama and the United States and relinquishment by the latter of jurisdiction over the Zone -- the requirement in H.R. 1511 that the present Canal agencies continue operations with respect to the Canal Zone after entry into force of the 1977 treaty would appear to create an ambiguity in the law.

Honorable John M. Murphy

For the foregoing reasons, the Panama Canal Company and Canal Zone Government cannot support enactment of H.R. 1511.

The Office of Management and Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

H. R. Parfitt

H. R. Parfitt
Governor of the Canal Zone
President, Panama Canal Company



DEPARTMENT OF STATE

Washington, D C 20520

MAR 29 1979

Dear Mr. Chairman:

The Secretary has asked me to respond to your letter of January 30 requesting comments on H.R. 1511, a bill concerning the implementation of the Panama Canal Treaty of 1977. The bill would, inter alia, seek to prohibit the use of any United States funds to implement the Treaty unless the use of those funds for that purpose would be expressly provided for by the Congress; it would also seek to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress would enact legislation expressly authorizing such a transfer.

The Administration strongly opposes the enactment of H.R. 1511. The bill's prohibition against the expenditure of any funds "to take any action in preparation" for implementation of the Treaty would be highly detrimental to our interests in maintaining the efficient operation of the Canal. As Administration witnesses have testified, to prohibit preparation for implementation would serve only to deprive our Canal operating authorities, our military forces, and our employees of the ability to ensure a smooth and orderly transition when the Treaties enter into force. In our view, it is clearly in our national interest that we plan and prepare as thoroughly as possible for the transition that will take place October 1. Any expenditures of funds required for such preparations must of course be made in accordance with existing statutory authority or legislation enacted for the purpose.

The Honorable

John M. Murphy,

Chairman,

Committee on Merchant Marine and Fisheries,
House of Representatives.

The provisions of H.R. 1511 which seek to prohibit the expenditure of funds "to implement" the Treaty absent additional legislation are similarly inappropriate. The Treaty will not enter into force, and therefore cannot be implemented, until October 1. The Congress is now actively considering legislation to implement the Treaties, including bills prepared by you, the Administration, and Congressman Hansen. Thus, H.R. 1511 seems wholly unnecessary to the extent it is designed to assure that the Congress will have an adequate opportunity to exercise its legislative authority with respect to Treaty implementation.

Moreover, to the extent H.R. 1511 suggests that the U.S. would have an option as to whether or not to comply with various provisions of the Treaty, it is incorrect as a matter of international law. Such a suggestion could unnecessarily raise serious questions as to the good faith of the United States in Panama and in other nations with whom we maintain treaty relationships.

The Panama Canal Treaty will enter into force on October 1, 1979. No unilateral act by the United States can relieve this country of its international obligations under the Treaty. We therefore strongly support the current efforts of the Congress to develop legislation to implement that Treaty in a manner which will fully protect the interests of the United States in maintaining the security and efficiency of the Panama Canal, and oppose H.R. 1511 as unnecessary and counterproductive to this objective.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

96TH CONGRESS
1ST SESSION

H. R. 1716

To implement the Panama Canal Treaty of 1977 and related agreements, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 31, 1979

Mr. MURPHY of New York (for himself, Mr. ZABLOCKI, Mr. RODINO, and Mr. PRICE) (by request) introduced the following bill; which was divided and referred for a period ending not later than April 10, 1979, as follows: Sections 101 through 105 and section 107 to the Committee on International Relations; Title II and section 106 to the Committee on Merchant Marine and Fisheries; Title III to the Committee on Post Office and Civil Service; Title IV to the Committee on the Judiciary; and Title V and section 2 concurrently to the Committees on International Relations, the Judiciary, Merchant Marine and Fisheries, and Post Office and Civil Service.

A BILL

To implement the Panama Canal Treaty of 1977 and related agreements, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That it is the purpose of this Act to provide legislation neces-
4 sary to or desirable for the implementation of the Panama
5 Canal Treaty of 1977 between the United States of America

- 1 and the Republic of Panama and of the related agreements
- 2 accompanying that Treaty.

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- Sec. 501. Health director; hospitals.
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- Sec. 503. Effective date.

1 SEC. 2. DEFINITIONS AND GENERAL PROVISIONS.—

2 (a) As used in this Act, references to the Panama Canal
3 Treaty of 1977 and related agreements mean the Panama
4 Canal Treaty between the United States of America and the
5 Republic of Panama signed September 7, 1977, the agree-
6 ments relating to and implementing that Treaty signed on the
7 same date, and any agreement concluded pursuant to the Ex-
8 change of Notes relating to Air Traffic Control Services
9 signed September 7, 1977.

10 (b) The Canal Zone Code is hereby redesignated the
11 Panama Canal Code.

12 (c) Except as otherwise provided in, or where inconsis-
13 ent with, the provisions of this Act, the following words and
14 phrases are amended as follows wherever they appear in the
15 Panama Canal Code and other laws of the United States,
16 unless in context the changes are clearly not intended, or
17 unless such words and phrases refer to a time prior to the
18 effective date of this Act, as defined in section 503 (herein
19 called "the effective date"):

20 (1) "Panama Canal Company" to read "Panama
21 Canal Commission".

22 (2) "Company" to read "Commission" wherever
23 the word "Company" has reference to the Panama
24 Canal Company.

5

1 (3) "Canal Zone Government" to read "Panama
2 Canal Commission".

3 (4) "Governor" or "Governor of the Canal Zone"
4 to read "Panama Canal Commission" wherever the
5 reference is to the Governor of the Canal Zone.

6 (5) "President" to read "Administrator" wherever
7 the word "President" has reference to the president of
8 the Panama Canal Company.

9 (6) "Government of the Canal Zone", or "Gov-
10 ernment", wherever the reference is to the Govern-
11 ment of the Canal Zone, to read "United States of
12 America".

13 (7) "Canal Zone waters" and "waters of the
14 Canal Zone" to read "Panama Canal waters" and
15 "waters of the Panama Canal", respectively.

16 (8) "Canal Zone Merit System" to read "Panama
17 Canal Employment System".

18 (9) "Canal Zone Board of Appeals" to read
19 "Panama Canal Board of Appeals".

20 (d) Reference to the Canal Zone in provisions of the
21 Panama Canal Code or other laws of the United States
22 which apply to transactions, occurrences, or status after
23 (treaty effective date) shall be deemed to be to areas and
24 installations in the Republic of Panama made available to the

6

1 United States pursuant to the Panama Canal Treaty of 1977
2 and related agreements.

3 (e) The President shall, within two years after the
4 Panama Canal Treaty of 1977 enters into force, submit to
5 the Congress proposed legislation which would—

6 (1) amend or repeal provisions of law which in
7 their present form are applicable only during the tran-
8 sition period prescribed in Article XI of that Treaty,
9 and

10 (2) incorporate the remaining provisions of the
11 Panama Canal Code into the United States Code, pro-
12 posing any changes thereto considered advisable in
13 light of the experience as of that time under that
14 Treaty.

15 TITLE I—PANAMANIAN RELATIONS AND
16 SECURITY MATTERS

17 SEC. 101. UNITED STATES-PANAMA JOINT COMMIT-
18 TEES.—(a) The President shall appoint the representatives of
19 the United States to the Joint Commission on the Environ-
20 ment to be established under paragraph 2 of Article VI of the
21 Panama Canal Treaty of 1977.

22 (b) The President shall designate and the Secretary of
23 State shall coordinate the participation of the representatives
24 of the United States to the Consultative Committee between
25 the United States and the Republic of Panama to be estab-

1 lished under paragraph 7 of Article III of the Panama Canal
2 Treaty of 1977.

3 SEC. 102. AUTHORITY OF THE AMBASSADOR.—(a)
4 The Ambassador to the Republic of Panama shall have full
5 responsibility for the coordination of the transfer to the Re-
6 public of Panama of those functions that are to be assumed
7 by the Republic of Panama pursuant to the Panama Canal
8 Treaty of 1977 and related agreements.

9 (b) The Administrator of the Panama Canal Commission
10 and personnel under his supervision shall not be subject to
11 the direction or supervision of the United States Chief of Mis-
12 sion in the Republic of Panama with respect to the responsi-
13 bilities of the Commission for the operation, management, or
14 maintenance of the Panama Canal as established in this or
15 other Acts, and the Panama Canal Treaty of 1977 and its
16 related agreements; in other respects, section 2680a of title
17 22, United States Code, shall be applicable.

18 SEC. 103. SECURITY LEGISLATION.—(a) Sections 34
19 and 35 of title 2 of the Panama Canal Code are repealed.

20 (b) Section 1 of title II of the Act of June 15, 1917 (50
21 U.S.C. 191) is amended by (1) striking the second paragraph
22 of that section, and by (2) striking the term “the Canal
23 Zone,”.

24 (c) Section 2 of the Act of November 15, 1941 (50
25 U.S.C. 191b) is repealed.

1 (d) Section 1 of title XIII of the Act of June 15, 1917
2 (50 U.S.C. 195) is amended by striking the term "the Canal
3 Zone and".

4 (e) Section 1 of the Act of August 9, 1954 (50 U.S.C.
5 196) is amended by striking the term "including the Canal
6 Zone,".

7 SEC. 104. ARMS EXPORT CONTROL.— Section 38 of
8 the Arms Export Control Act (22 U.S.C. 2778) is amended
9 by striking out subsection (d) thereof.

10 SEC. 105. PRIVILEGES AND IMMUNITIES.—The Secre-
11 tary of State shall from among persons recommended by the
12 Panama Canal Commission determine, and shall maintain
13 and from time to time furnish to the Government of the Re-
14 public of Panama, the list of those officials and other persons
15 who shall enjoy the privileges and immunities accorded under
16 Article VIII of the Panama Canal Treaty of 1977.

17 SEC. 106. TERMINATION OF CANAL ZONE GOVERN-
18 MENT; TRANSFER OF RECORDS.—(a) Sections 1, 2, 3, 31,
19 32, 33, 333, and 334 of title 2 and sections 5081 through
20 5092 of title 6 of the Panama Canal Code are repealed.

21 (b) The Panama Canal Commission, other agencies or
22 departments, and United States courts in the Republic of
23 Panama are authorized to transfer any of their records, or
24 copies thereof, including records acquired from the Canal
25 Zone Government or Panama Canal Company such as vital

1 statistics records, to other agencies, departments, or courts of
2 the United States and, if determined by the head of the
3 agency or department concerned to be in the interest of the
4 United States, to the Government of the Republic of
5 Panama. Transfer of records or copies thereof under this sec-
6 tion to the Government of the Republic of Panama shall be
7 accomplished under the coordination and with the approval of
8 the Ambassador.

9 SEC. 107. PAYMENT TO PANAMA; REPEALER.—Title
10 I of the Act of November 27, 1973 (87 Stat. 636) is amended
11 by striking out the heading “PAYMENT TO THE REPUBLIC
12 OF PANAMA” and all that follows under that heading.

13 TITLE II—PANAMA CANAL COMMISSION

14 CHAPTER 1—COMMISSION: FISCAL MATTERS

15 SEC. 201. (a) Section 61 of title 2 of the Panama Canal
16 Code is amended to read as follows:

17 “SEC. 61. CONTINUATION, PURPOSES, OFFICES, AND
18 RESIDENCE OF THE COMMISSION.—(a) For the purposes of
19 managing, operating, and maintaining the Panama Canal and
20 its complementary works, installations, and equipment, and
21 of conducting operations incident thereto, in accordance with
22 the Panama Canal Treaty of 1977 and related agreements,
23 the Panama Canal Commission is established as a body cor-
24 porate and as an agency and instrumentality of the United

1 States, and is declared to be the successor to the Panama
2 Canal Company.

3 “(b) The principal office of the Commission shall be lo-
4 cated in the Republic of Panama in one of the areas made
5 available for the use of the United States under the Panama
6 Canal Treaty of 1977 and related agreements, but the Com-
7 mission may establish agencies or branch offices in such other
8 places as it deems necessary or appropriate in the conduct of
9 its business. Within the meaning of the laws of the United
10 States relating to jurisdiction or venue in civil actions, the
11 Commission is an inhabitant and resident of the District of
12 Columbia, and of the eastern judicial district of Louisiana.”.

13 (b) Subsection (a) of section 62 of title 2 of the Panama
14 Canal Code is amended by substituting the words “Panama
15 Canal Company” for “Company” and the words “Panama
16 Canal Commission” for “Panama Canal Company”.

17 SEC. 202. (a) Subsection (e) of section 62 of title 2 of
18 the Panama Canal Code is repealed.

19 (b) Subsection (f) of section 62 of title 2 of the Panama
20 Canal Code is amended by substituting the words “compute
21 its capital surplus account” for “account for its surplus”, and
22 by deleting the words “in determining the base for the inter-
23 est payments required by subsection (e) of this section”.

24 (c) Section 70 of title 2 of the Panama Canal Code is
25 amended by deleting the words “in determining the base for

1 interest payments required by section 62(e) of this title", and
2 by inserting the term "including operating expenses and pay-
3 ments required by paragraph 5 of Article III and paragraphs
4 4 (a), (b), and (c) of Article XIII of the Panama Canal Treaty
5 of 1977," after the term "working capital requirements,".

6 (d) Section 72 of title 2 of the Panama Canal Code is
7 amended by deleting the words "pursuant to section 62(e) of
8 this title".

9 SEC. 203. Subsection (g) of section 62 of title 2 of the
10 Panama Canal Code is amended to read as follows:

11 "(g) The Panama Canal Commission shall pay directly
12 from Canal operating revenues to the Republic of Panama
13 those payments required under paragraph 4 of Article XIII
14 of the Panama Canal Treaty of 1977. In determining the
15 adequacy of operating revenues for the purpose of payments
16 to Panama under paragraph 4(c) of that Article, such operat-
17 ing revenues of a given fiscal period shall be reduced by (1)
18 all costs attributable to the operation, maintenance, and im-
19 provement of the Canal of that period including (i) operating
20 expenses determined in accordance with generally accepted
21 accounting principles, (ii) payments to Panama under para-
22 graphs 4(a) and 4(b) of that Article and under paragraph 5 of
23 Article III of the Treaty, and (iii) amounts in excess of de-
24 preciation and amortization programed to fund requirements
25 for plant replacement, expansion, and improvements; (2)

1 amounts allocated prior to the effective date of an increase in
2 toll rates for the purpose of matching revenues with expenses
3 during the period projected for the increase to remain in
4 effect; (3) the accumulated sum from prior years (beginning
5 with the year in which the Panama Canal Treaty of 1977
6 enters into force) of any excess of such cost requirements of
7 the Commission over operating revenues; and (4) working
8 capital requirements of the Commission as approved annually
9 by its Board of Directors.”.

10 SEC. 204. Section 62 of title 2 of the Panama Canal
11 Code is amended by adding a new subsection (h) to read as
12 follows:

13 “(h) Payments by the Commission to the Republic of
14 Panama for providing public services in accordance with
15 paragraph 5 of Article III of the Panama Canal Treaty of
16 1977 shall be treated for all purposes as an operating cost of
17 the Commission.”.

18 SEC. 205. Subsection (a) of section 63 of title 2 of the
19 Panama Canal Code is amended to read as follows:

20 “(a) A Board of Directors shall manage the affairs of the
21 Panama Canal Commission. The President of the United
22 States shall appoint the members of the Board in accordance
23 with paragraph 3 of Article III of the Panama Canal Treaty
24 of 1977, and neither this chapter nor any other law prevents
25 the appointment and service as a director, or as an officer of

1 the Commission, of an officer or employee of the United
2 States, or of a person who is not a national of the United
3 States. Each director so appointed shall, subject to paragraph
4 3 of Article III of the Panama Canal Treaty of 1977, hold
5 office at the pleasure of the President, and, before entering
6 upon his duties, shall take an oath faithfully to discharge the
7 duties of his office.”.

8 SEC. 206. Subsection (c) of section 63 of title 2 of the
9 Panama Canal Code is amended to read as follows:

10 “(c) The directors shall hold meetings as provided by
11 the bylaws of the Panama Canal Commission. A quorum for
12 the transaction of business shall consist of a majority of the
13 directors of which a majority of those present are nationals of
14 the United States.”.

15 SEC. 207. Section 64 of title 2 of the Panama Canal
16 Code is amended to read as follows:

17 “SEC. 64. ADMINISTRATOR AND DEPUTY.—The Presi-
18 dent of the United States shall appoint the Administrator and
19 Deputy Administrator of the Panama Canal Commission.
20 The Administrator shall, subject to the direction and under
21 the supervision of the Board, be the chief executive officer of
22 the Commission. The Administrator and Deputy Administra-
23 tor shall hold office at the pleasure of the President.”.

1 SEC. 208. Paragraph (3) of subsection (a) of section 65
2 of title 2 of the Panama Canal Code is amended to read as
3 follows:

4 “(3) Sue and be sued in its corporate name, except
5 that—

6 “(A) its amenability to suit is limited by the im-
7 munities provided by Article VIII of the Panama
8 Canal Treaty of 1977, and otherwise by law;

9 “(B) salaries or other moneys owed by the Com-
10 mission to its employees shall not be subject to attach-
11 ment, garnishment, or similar process, except as other-
12 wise expressly provided by the laws of the United
13 States; and

14 “(C) it is exempt from any liability for prejudg-
15 ment interest.”.

16 SEC. 209. The opening clause of subsection (a) of sec-
17 tion 66 of title 2 of the Panama Canal Code is amended to
18 read as follows:

19 “(a) Subject to the Government Corporation Control
20 Act (31 U.S.C. 841 et seq.), and to the Panama Canal
21 Treaty of 1977 and related agreements, the Panama Canal
22 Commission may:”.

23 SEC. 210. Sections 67 and 73 of title 2 of the Panama
24 Canal Code are repealed. Section 68 of that title is amended
25 to read as follows:

1 “SEC. 68. ASSETS AND LIABILITIES.—(a) Property
2 and other assets of the Panama Canal Company and of the
3 Canal Zone Government which are not transferred to other
4 United States Government agencies or to the Republic of
5 Panama, or otherwise disposed of, shall, notwithstanding sec-
6 tion 5 of the Act of July 16, 1914, as amended (31 U.S.C.
7 638(a)), be the property and assets of the Panama Canal
8 Commission from and after the effective date, and except as
9 otherwise provided by law, the Commission shall assume the
10 liabilities of the Panama Canal Company and Canal Zone
11 Government then outstanding.

12 “(b) The Commission may depreciate the Panama
13 Canal, its complementary works, installations, and equip-
14 ment, and all other property and assets of the Commission,
15 and may amortize over the life of the Panama Canal Treaty
16 of 1977 the right to use certain assets such as housing made
17 available to the United States under that Treaty and related
18 agreements. The value of these use rights, as determined by
19 the Commission, shall be established as an asset on the books
20 of the Commission and amortized over the period of use.

21 “(c) The assets and liabilities referred to in this section
22 shall be deemed to have been accepted and assumed by the
23 Commission without the necessity of any act on the part of
24 the Commission except as otherwise stipulated by section 62
25 of this title.”.

1 SEC. 211. (a) The introductory phrase to section 1331
2 of title 2 of the Panama Canal Code is amended by striking
3 out the word "President" and by inserting in lieu thereof the
4 word "Commission".

5 (b) Paragraph (1) of section 1331 of title 2 of the
6 Panama Canal Code is amended by striking out the words
7 "harbors and other waters of the Canal Zone" and by insert-
8 ing in lieu thereof the words "waters of the Panama Canal
9 and areas adjacent thereto including the ports of Balboa and
10 Cristobal".

11 (c) Paragraph (4) of section 1331 of title 2 of the
12 Panama Canal Code is amended by striking out the words
13 "waters of the Canal Zone" and by inserting in lieu thereof
14 the words "waters of the Panama Canal and areas adjacent
15 thereto including the ports of Balboa and Cristobal".

16 SEC. 212. FUNDS AND ACCOUNTS.—(a) Section 231 of
17 title 2 of the Panama Canal Code is repealed.

18 (b) Section 232 of title 2 of the Panama Canal Code is
19 amended to read as follows:

20 "SEC. 232. FURNISHING OF SERVICES; REIMBURSE-
21 MENTS.—(a) The Department of Defense shall reimburse the
22 Panama Canal Commission for amounts expended by the
23 Commission in maintaining defense facilities in standby con-
24 dition for the Department of Defense.

1 “(b) Such agency as the President may designate is au-
2 thorized to provide educational and health care services to
3 persons eligible to receive such services under the Panama
4 Canal Treaty of 1977 and related agreements. Notwithstand-
5 ing any other law, the appropriations of such agency are
6 made available for conducting educational and health care
7 activities, including kindergartens and college, formerly car-
8 ried out by the Canal Zone Government, and for providing
9 the services related thereto.

10 “(c) Amounts so expended for furnishing services to per-
11 sons eligible to receive them under the Panama Canal Treaty
12 of 1977 and related agreements, less amounts payable by
13 such persons, shall be fully reimbursable to the agency fur-
14 nishing the services, except to the extent that such expendi-
15 tures are the responsibility of that agency. The appropri-
16 ations or funds of the Panama Canal Commission are made
17 available for such reimbursements on behalf of employees of
18 the Commission and other persons authorized to receive such
19 services and eligible under the Panama Canal Treaty and
20 related agreements. The appropriations or funds of other
21 agencies conducting operations in the Republic of Panama,
22 including the Smithsonian Institution, are made available for
23 reimbursements on behalf of employees of such agencies and
24 their dependents.

1 “(d) The appropriations or funds of United States agen-
2 cies conducting operations in the Republic of Panama are
3 made available to defray the cost of (i) health care services to
4 elderly or disabled persons who were eligible to receive such
5 services prior to the effective date, less amounts payable by
6 such persons, and (ii) educational services provided by
7 schools in the Republic of Panama which are not operated by
8 the United States to persons who were receiving such serv-
9 ices at the expense of the Canal Zone Government prior to
10 the effective date.”.

11 (c) Section 233 of title 2 of the Panama Canal Code is
12 amended by striking the term “Canal Zone Government or
13 the Panama Canal Company” and by inserting in lieu thereof
14 the term “Panama Canal Commission”.

15 (d) Section 234 of title 2 of the Panama Canal Code is
16 amended by striking the term “Canal Zone” and by inserting
17 in lieu thereof the term “Panama Canal Commission”.

18 (e) Section 235 of title 2 of the Panama Canal Code is
19 amended by striking the term “Canal Zone Government and
20 the Panama Canal Company” and by inserting in lieu thereof
21 the term “Panama Canal Commission”.

22 SEC. 213. PUBLIC PROPERTY AND PROCUREMENT.—

23 (a) Section 371 of title 2 of the Panama Canal Code is re-
24 pealed.

1 (b) Section 372 of title 2 of the Panama Canal Code is
2 amended to read as follows:

3 “SEC. 372. TRANSFERS AND CROSS-SERVICING BE-
4 TWEEN AGENCIES.—(a) In the interest of economy and
5 maximum efficiency in the utilization of Government proper-
6 ty and facilities, there are authorized to be transferred, not-
7 withstanding section 5 of the Act of July 16, 1914, as
8 amended (31 U.S.C. 638(a)), between departments and agen-
9 cies, with or without exchange of funds, all or so much of the
10 facilities, buildings, structures, improvements, stock, and
11 equipment of their activities located in the Republic of
12 Panama as may be mutually agreed upon by the departments
13 and agencies involved and approved by the President of the
14 United States or his designee. With respect to transfers with-
15 out exchange of funds, transfers to or from the Panama
16 Canal Commission are subject to section 62 of this title, as
17 amended.

18 “(b) The Panama Canal Commission and other agencies
19 of the United States may enter into cross-servicing agree-
20 ments for the use of facilities, furnishing of services, or per-
21 formance of functions.

22 “(c) The provisions of subsections (a) and (b) above shall
23 be applicable to the Smithsonian Institution.”.

CHAPTER 2—TOLLS

SEC. 230. Section 411 of title 2 of the Panama Canal Code is amended to read as follows:

“SEC. 411. PRESCRIPTION OF MEASUREMENT RULES AND TOLLS.—(a) The Panama Canal Commission may prescribe, and from time to time change:

“(1) the rules for the measurement of vessels for the Panama Canal; and

“(2) subject to section 412 of this title, the tolls that shall be levied for the use of the Canal.

“(b) The Commission shall give three months’ notice, by publication in the Federal Register, of proposed changes in basic rules of measurement or in rates of tolls, during which period a public hearing shall be conducted. Changes in basic rules of measurement and changes in rates of tolls shall be subject to and shall take effect upon the approval of the President of the United States, whose action in such matters shall be final.”.

SEC. 231. In order to insure that the rates of tolls in effect on the effective date are adequate to meet the requirements of section 412 of title 2 of the Panama Canal Code, as amended by section 232 of this Act, the Panama Canal Company is authorized, in advance of that date, to change the rates, effective on the effective date, such change to be subject to the approval of the President whose action in the

1 matter shall be final. If and to the extent that time permits,
2 the Company shall give three months' notice, by publication
3 in the Federal Register, of such proposed changes in rates of
4 tolls, during which period a public hearing shall be
5 conducted.

6 SEC. 232. BASES OF TOLLS.—(a) Subsection (b) of sec-
7 tion 412 of title 2 of the Panama Canal Code is amended to
8 read as follows:

9 “(b) Tolls shall be prescribed at rates calculated to
10 cover as nearly as practicable all anticipated costs of main-
11 taining and operating the Panama Canal, together with the
12 facilities and appurtenances related thereto, including depre-
13 ciation of assets, amortization of use rights, and the pay-
14 ments to Panama pursuant to paragraph 5 of Article III and
15 paragraphs 4(a) and 4(b) of Article XIII of the Panama
16 Canal Treaty of 1977. In determining the rates of tolls, there
17 may also be taken into account unrecovered past costs, fund-
18 ing required to establish or maintain a capital reserve ac-
19 count programed to fund requirements for plant replacement,
20 expansion, and improvements, and the necessity of establish-
21 ing reserves for the purpose of matching revenues with ex-
22 penses during the period projected for a given toll rate to
23 remain in effect.”.

24 (b) Subsection (c) of section 412 of title 2 of the Panama
25 Canal Code is amended to read as follows:

1 “(c) Vessels operated by the United States, including
2 vessels of war and auxiliary vessels, and ocean-going training
3 ships owned by the United States and operated by State nau-
4 tical schools, shall pay tolls.”.

5 (c) Subsection (d) of section 412 of title 2 of the Panama
6 Canal Code is amended by deleting the words “of articles
7 XVIII and XIX of the convention between the United States
8 and Panama concluded on November 18, 1903, and”, by in-
9 serting a comma in place of the period at the end of the
10 subsection, and by adding thereafter “and of Articles II, III,
11 and VI of the Treaty Concerning the Permanent Neutrality
12 and Operation of the Panama Canal, between the United
13 States of America and the Republic of Panama, signed Sep-
14 tember 7, 1977.”.

15 CHAPTER 3—CLAIMS

16 SEC. 260. Chapter 11 of title 2 of the Panama Canal
17 Code is amended as follows:

18 (a) The title of the chapter is amended to read “Claims
19 Arising from Operation of Canal.”

20 (b) Section 271 of title 2 of the Panama Canal Code is
21 repealed.

22 (c) The headings of subchapters I and II are deleted.

23 (d) Section 291 of title 2 of the Panama Canal Code is
24 amended as follows:

1 (1) The period at the end of the first sentence is
2 changed to a comma, and the following language is
3 added: "unless it is established that the injury was not
4 proximately caused by the negligence or fault of any of
5 its officers or employees acting within the scope of his
6 employment and in the line of his duties in connection
7 with the operation of the Canal."

8 (2) In the fourth sentence, the words "the side"
9 are amended to read "any portion of the hull".

10 (e) Section 293 of title 2 of the Panama Canal Code is
11 amended to read as follows:

12 "SEC. 293. MEASURE OF DAMAGES.—(a) In determin-
13 ing the amount of the award of damages for injuries to a
14 vessel for which the Panama Canal Commission is deter-
15 mined to be liable, there may be included—

16 "(1) actual or estimated cost of repairs;

17 "(2) charter hire actually lost by the owners, or
18 charter hire actually paid, depending upon the terms of
19 the charter party, for only the time the vessel is actu-
20 ally undergoing repairs, on drydock or otherwise;

21 "(3) maintenance of the vessel and wages of the
22 crew, if they are found to be actual additional expenses
23 or losses incurred outside of the charter hire, for only
24 the time the vessel is actually undergoing repairs, on
25 drydock or otherwise; and

1 “(4) except as prohibited by subsection (b) of this
2 section, or by any other provision of law, other ex-
3 penses which are definitely and accurately shown to
4 have been incurred necessarily and by reason of the
5 accident or injuries.

6 “(b) Agent’s fees or commissions, general average ex-
7 penses, attorney’s fees, bank commissions, port charges or
8 other incidental expenses of similar character, or any items
9 which are indefinite, indeterminable, speculative, or con-
10 jural shall not be allowed.

11 “(c) The Commission shall be furnished such vouchers,
12 receipts, or other evidence as may be necessary in support of
13 any item of a claim. If a vessel is not operated under charter
14 but by the owner directly, evidence shall be secured if availa-
15 ble as to the sum for which vessels of the same size and class
16 can be chartered in the market. If the charter value cannot
17 be determined, the value of the use of the vessel to its owners
18 in the business in which it was engaged at the time of the
19 injuries shall be used as a basis for estimating the damages
20 for the vessel’s detention; and the books of the owners show-
21 ing the vessel’s earnings about the time of the accident or
22 injuries shall be considered as evidence of probable earnings
23 during the time of detention. If the books are unavailable,
24 such other evidence shall be furnished as may be necessary.”.

1 (f) Section 294 of title 2 of the Panama Canal Code is
2 amended by deleting the word "or" in paragraph (5), by re-
3 numbering the present paragraph (6) as paragraph (7), and by
4 inserting a new paragraph (6) to read as follows:

5 “(6) time necessary for investigation of marine ac-
6 cidents; or”.

7 (g) Section 296 of title 2 of the Panama Canal Code is
8 amended by deleting the words “United States District Court
9 for the District of the Canal Zone” in the first sentence and
10 inserting in lieu thereof the words “United States District
11 Court for the Eastern District of Louisiana”.

12 (h) The present section 297 of title 2 of the Panama
13 Canal Code is designated as subsection (a), and a new sub-
14 section (b) is added to read as follows:

15 “(b) Lack of knowledge on the part of the master, offi-
16 cers, crew, or passengers that an accident giving rise to a
17 claim under this chapter has occurred does not excuse non-
18 compliance with the requirements of this section.”.

19 (i) A new section 298 of title 2 of the Panama Canal
20 Code is added, to read as follows:

21 “SEC. 298. TIME FOR PRESENTING CLAIM AND COM-
22 MENCING ACTION.—A claim against the Commission under
23 this chapter shall be forever barred unless it is presented in
24 writing to that agency within two years after such claim ac-
25 crues or unless action is begun within one year after the date

1 of mailing of notice of final decision on the claim by the Com-
2 mission.”.

3 (j) A new section 299 of title 2 of the Panama Canal
4 Code is added, to read as follows:

5 “SEC. 299. BOARD OF LOCAL INSPECTORS.—(a)

6 There is established a Board of Local Inspectors of the
7 Panama Canal Commission which shall perform, in accord-
8 ance with regulations prescribed by the Commission—

9 “(1) the investigations called for by section 297 of
10 this chapter; and

11 “(2) such other duties in matters of a marine
12 character as it may be assigned by the Commission.

13 “(b) The Commission shall, by regulation, designate the
14 members of the Board and establish procedures by which the
15 Board carries out its functions.

16 “(c) In conducting the investigations provided for by
17 subsection (a) of this section, members of the Board may
18 summon witnesses, administer oaths, and require the produc-
19 tion of books and papers necessary thereto.”.

20 CHAPTER 4—SEA-LEVEL CANAL STUDY

21 SEC. 270. (a) The President shall appoint the repre-
22 sentatives of the United States to any joint committee or
23 body with the Republic of Panama to study the possibility of
24 a sea-level canal in the Republic of Panama pursuant to Arti-
25 cle XII of the Panama Canal Treaty of 1977.

1 (b) Upon the completion of any joint study between the
2 United States and the Republic of Panama concerning the
3 feasibility of a sea-level canal in the Republic of Panama pur-
4 suant to paragraph 1 of Article XII of the Panama Canal
5 Treaty of 1977, the text of the study shall be transmitted by
6 the President to the President of the Senate and to the
7 Speaker of the House of Representatives.

8 (c) No construction of a sea-level canal by the United
9 States in the Republic of Panama shall be undertaken except
10 with express congressional authorization after submission of
11 the study by the President as provided in subsection (b).

12 TITLE III—EMPLOYEES AND POSTAL MATTERS

13 CHAPTER 1—EMPLOYMENT SYSTEM

14 SEC. 301. (a) Sections 101, 102, 122, 123, 147, and
15 154 of title 2 of the Panama Canal Code are repealed.

16 (b) Section 103 of title 2 of the Panama Canal Code is
17 amended by striking the terms “Canal Zone Government,
18 Panama Canal Company” and inserting in lieu thereof the
19 term “Panama Canal Commission”, and by redesignating
20 that section as section 122 of that title and code.

21 SEC. 302. Section 141 of title 2 of the Panama Canal
22 Code is amended as follows:

23 (a) The definition of the word “department” is amended
24 to read as follows: “‘department’ means (i) the Panama
25 Canal Commission, and (ii) an executive agency (within the

1 meaning of section 105 of title 5 of the United States Code)
2 which makes an election under section 142(b) of this chap-
3 ter;”.

4 (b) The definition of the word “position” is amended to
5 read as follows: “‘position’ means those duties and responsi-
6 bilities of a civilian nature under the jurisdiction of a depart-
7 ment which are performed in the Republic of Panama.”.

8 SEC. 303. Section 142 of title 2 of the Panama Canal
9 Code is amended by redesignating subsection (b) thereof as
10 subsection (d), and by striking the caption and subsection (a)
11 thereof and inserting in lieu thereof the following:

12 “SEC. 142. PANAMA CANAL EMPLOYMENT
13 SYSTEM.—(a) The Panama Canal Commission shall conduct
14 its wage and employment practices in accordance with a
15 Panama Canal Employment System which shall be estab-
16 lished in accordance with—

17 “(1) the principles established in the Panama
18 Canal Treaty of 1977 and related agreements, and
19 with the provisions of this chapter and other applicable
20 law; and

21 “(2) regulations promulgated by, or under the au-
22 thority of, the President in accordance with this chap-
23 ter and taking into account any recommendation of the
24 Panama Canal Commission.

1 “(b) The head of an executive agency other than the
2 Panama Canal Commission may elect to have the Panama
3 Canal Employment System made applicable in whole or in
4 part to personnel of his agency in the Republic of Panama.

5 “(c) The provisions of chapter 71 of title 5 of the United
6 States Code shall not apply to the Panama Canal Commis-
7 sion or to its personnel. In lieu thereof, the President shall
8 establish a form of collective bargaining, applicable to the
9 Commission’s employees; into which is incorporated the sub-
10 stance of sections 7102, 7106, 7116, 7120, and 7131. The
11 form of collective bargaining so established shall contain such
12 other necessary provisions, and shall be administered, so as
13 to provide the Commission’s employees with the right to bar-
14 gain collectively under the same conditions and with respect
15 to the same subject matter that obtains where that right is
16 exercised generally in the Federal service within the conti-
17 nental United States.”.

18 SEC. 304. Notwithstanding other provisions of this
19 chapter, the provisions of subchapter III of chapter 7 of title
20 2 of the Panama Canal Code establishing the Canal Zone
21 Merit System, and the administrative regulations promulgat-
22 ed thereunder, shall continue in effect until such time as the
23 Panama Canal Employment System has been established
24 pursuant to section 303 of this Act.

1 SEC. 305. Section 144 of title 2 of the Panama Canal
2 Code is amended by deleting subsection (d) thereof. Section
3 146 is amended to read as follows:

4 “SEC. 146. RECRUITMENT AND RETENTION REMU-
5 NERATION.—(a) In addition to basic compensation, addition-
6 al remuneration in such amounts as the head of the depart-
7 ment concerned determines, may be paid as overseas recruit-
8 ment and retention differentials to the following categories of
9 individuals if, in the judgment of the head of the department
10 concerned, the recruitment and retention of such employees
11 is essential—

12 “(1) persons employed by the Panama Canal
13 Company, Canal Zone Government, or a department
14 in the Canal Zone prior to the effective date;

15 “(2) persons thereafter recruited outside of
16 Panama for a position in the Republic of Panama; and

17 “(3) medical doctors employed by the Department
18 of Defense or Panama Canal Commission.

19 “(b) Employees who fall into more than one of the three
20 categories described in subsection (a) of this section may
21 qualify for additional remuneration under only one of those
22 categories.

23 “(c) Additional remuneration prescribed under this sec-
24 tion may not exceed 25 percent of the rate of basic compen-
25 sation for the same or similar work performed in the conti-

1 nental United States by employees of the Government of the
2 United States.”.

3 SEC. 306. (a) Title 2 of the Panama Canal Code is
4 amended by adding a new section 147 to read as follows:

5 “SEC. 147. TRANSFER OF FEDERAL EMPLOYEES TO
6 PANAMA CANAL COMMISSION.—The head of any Federal
7 agency, including the United States Postal Service, is au-
8 thorized to enter into agreements for the transfer or detail of
9 that agency’s employees, serving under permanent appoint-
10 ment, to the Panama Canal Commission. Under regulations
11 prescribed by the Office of Personnel Management, any em-
12 ployee so transferred or detailed shall, upon completion of his
13 tour of duty with the Commission, be entitled to reemploy-
14 ment with the agency from which he was transferred or de-
15 tailed without loss of pay, seniority, or other rights or bene-
16 fits to which he would have been entitled had he remained on
17 the rolls of that agency.”.

18 (b) Section 148 of title 2 of the Panama Canal Code is
19 amended by—

20 (1) changing the parenthetical citation “(5 U.S.C.,
21 sec. 2091 et seq.)” in paragraph (1) to read “(5 U.S.C.
22 §§ 8701 et seq.)”;

23 (2) changing the parenthetical citation “(5 U.S.C.,
24 sec. 751 et seq.)” in paragraph (2) to read “(5 U.S.C.
25 §§ 8101 et seq.)”;

(3) changing the parenthetical citation “(5 U.S.C., sec. 2251 et seq.)” in paragraph (4) to read “(5 U.S.C. §§ 8331 et seq.)”; and

(4) revising the unindented portion of the section following paragraph (6) to read as follows:

“the basic compensation of each employee shall include the rate of basic compensation established for his position, and, where appropriate, the amount of overseas recruitment and retention differentials, determined in the manner respectively provided by sections 144 and 146 of this title.”.

SEC. 307. Section 149 of title 2 of the Panama Canal Code is amended to read as follows:

“SEC. 149. MERIT AND OTHER EMPLOYMENT REQUIREMENTS.—(a) Subject to this subchapter, the President may, from time to time and taking into account any recommendation of the Panama Canal Commission, amend or modify the provisions of the Panama Canal Employment System, including provisions relating to selection for appointment, reappointment, reinstatement, reemployment, and retention with respect to positions, employees, and individuals under consideration for appointment to positions, established by regulations under section 142 of this chapter.

“(b) The Panama Canal Employment System shall—

“(1) subject to and as limited by the Panama Canal Treaty of 1977 and related agreements, be

1 based on the merit of the employee or individual and
2 upon his qualifications and fitness to hold the position
3 concerned;

4 “(2) conform generally to policies, principles, and
5 standards for the competitive civil service of the Gov-
6 ernment of the United States; and

7 “(3) include provision for appropriate interchange,
8 between the Panama Canal Employment System and
9 the competitive civil service of the Government of the
10 United States, of citizens of the United States em-
11 ployed by the Government of the United States.”.

12 SEC. 308. Section 155 of title 2 of the Panama Canal
13 Code is amended by redesignating subsection (b) thereof as
14 subsection (c), and by inserting in lieu of subsection (a) there-
15 of the following:

16 “(a) The President shall issue regulations necessary and
17 appropriate to carry out the provisions and accomplish the
18 purposes of this subchapter and, in the event of any election
19 under section 142(b), coordinate the policies and activities
20 under this subchapter of the departments involved.

21 “(b) In order to assist in carrying out his coordination
22 responsibility under subsection (a) and in implementing the
23 provisions of the Panama Canal Treaty of 1977 and related
24 agreements relating to recruitment, examination, determina-
25 tion of qualification standards and similar matters, the Presi-

1 dent may establish, as the successor to the Canal Zone Cen-
2 tral Examining Office, an office which shall be an entity
3 within the Panama Canal Commission.”.

4 SEC. 309. Subsection (a) of section 201 of title 2 of the
5 Panama Canal Code is amended by deleting the words “Gov-
6 ernor of the Canal Zone and President of the Panama Canal
7 Company, or as Lieutenant Governor of the Canal Zone and
8 Vice President of the Panama Canal Company,” and insert-
9 ing in lieu thereof the words “Administrator or Deputy Ad-
10 ministrator of the Panama Canal Commission.”.

11 SEC. 310. The provisions of this chapter shall be appli-
12 cable to Federal employees of the Smithsonian Institution.

13 CHAPTER 2—CONDITIONS OF EMPLOYMENT,
14 PLACEMENT, AND RETIREMENT

15 SEC. 321. Title 2 of the Panama Canal Code is amend-
16 ed by adding a new section 202 to read as follows:

17 “SEC. 202. TRANSFERRED EMPLOYEES.—With re-
18 spect to employees of the Panama Canal Company or Canal
19 Zone Government who are transferred to employment with
20 the Panama Canal Commission or other United States Gov-
21 ernment agencies in the Republic of Panama, the following
22 terms and conditions of employment shall be generally no
23 less favorable, from and after the entry into force of the
24 Panama Canal Treaty of 1977, than the terms and conditions

1 of employment with the Panama Canal Company and Canal
2 Zone Government immediately prior to that date:

3 “Wage rates; tropical differential; premium pay
4 and night differential; reinstatement and restoration
5 rights; injury and death compensation benefits; leave
6 and travel, except as modified to provide equity with
7 other employees within the agency to which the em-
8 ployee is transferred; transportation and repatriation
9 benefits; group health and life insurance; reduction-in-
10 force rights; an employee grievance system, and the
11 right to appeal adverse and disciplinary actions as well
12 as position classification actions; veteran’s preference
13 eligibility; holidays; saved pay provisions; and sever-
14 ance pay benefits.”.

15 SEC. 322. Title 2 of the Panama Canal Code is amend-
16 ed by adding a new section 203 to read as follows:

17 “SEC. 203. PLACEMENT.—(a) A United States citizen
18 who, immediately preceding the effective date of exchange of
19 instruments of ratification of the Panama Canal Treaty of
20 1977, was an employee of the Panama Canal Company or
21 Canal Zone Government, who separates or is scheduled to
22 separate on that date or thereafter in accordance with the
23 program established under subsection (c) of this section for
24 any reason other than misconduct or delinquency, and who is
25 not placed in another appropriate position with the United

1 States Government in the Republic of Panama shall, upon
2 the employee's request, be accorded appropriate placement
3 assistance to vacancies with the United States Government
4 in the United States.

5 “(b) A United States citizen who, immediately preced-
6 ing the effective date of exchange of instruments of ratifica-
7 tion of the Panama Canal Treaty of 1977, was an employee
8 of an agency of the United States Government, or a Federal
9 employee of the Smithsonian Institution, in the Canal Zone
10 other than the Panama Canal Company or Canal Zone Gov-
11 ernment, whose position is eliminated as the result of imple-
12 menting the Panama Canal Treaty of 1977 or related agree-
13 ments, and who is not placed in another appropriate position
14 with the United States Government in the Republic of
15 Panama shall, upon the employee's request, be accorded the
16 placement assistance provided for in subsection (a).

17 “(c) The Office of Personnel Management shall develop
18 and administer a Federal Government-wide placement pro-
19 gram for all eligible employees who request placement assist-
20 ance under this section.”.

21 SEC. 323. Title 2 of the Panama Canal Code is amend-
22 ed by adding a new section 204 to read as follows:

23 “SEC. 204. EDUCATIONAL TRAVEL BENEFITS.—De-
24 pendents of United States citizen employees of the Panama
25 Canal Commission who are eligible for educational travel

1 benefits under regulations issued by the Commission shall be
2 entitled to one round trip per year for undergraduate studies
3 in the United States until they reach their 23rd birthday.”.

4 SEC. 324. ADJUSTMENT OF COMPENSATION.—United
5 States citizen employees of the Panama Canal Commission
6 shall be paid an allowance to offset the increased cost of
7 living that may result from the withdrawal of the eligibility of
8 such employees and their dependents to use military postal
9 services, sales stores and exchanges five years after the date
10 of entry into force of the Panama Canal Treaty of 1977. The
11 amount of the additional compensation shall be determined by
12 the Panamal Canal Commission.

13 SEC. 325. EARLY RETIREMENT ELIGIBILITY.—Sec-
14 tion 8336 of title 5 of the United States Code is amended—

15 (1) by redesignating subsection (c) as subsection
16 (c)(1) and adding a new paragraph (2) to read as fol-
17 lows:

18 “(2) A law enforcement officer or firefighter employed
19 by the Panama Canal Company or the Canal Zone Govern-
20 ment immediately prior to the effective date of exchange of
21 instruments of ratification or entry into force of the Panama
22 Canal Treaty of 1977, who is separated from the service
23 prior to January 1, 2000, and, upon separation, meets the
24 age and service requirements in paragraph (1), or who is sep-

1 arated within 2 years prior to meeting the age and service
2 requirements in paragraph (1) is entitled to an annuity.”,

3 (2) by redesignating subsection (h) as subsection
4 (k) and inserting new subsections (h), (i), and (j) to read
5 as follows:

6 “(h) An employee of the Panama Canal Commission or
7 of an Executive agency conducting operations in the Canal
8 Zone or Republic of Panama, who is separated from the serv-
9 ice prior to January 1, 2000—

10 “(1) involuntarily, as a result of the implementa-
11 tion of the Panama Canal Treaty of 1977 or related
12 agreements, except by removal for cause on charges of
13 misconduct or delinquency, after completing 20 years
14 of service;

15 “(2) voluntarily, after completing 25 years of
16 service or after becoming age 50 and completing 20
17 years of service; or

18 “(3) involuntarily, as a result of the implementa-
19 tion of the Panama Canal Treaty of 1977 or related
20 agreements, except by removal for cause on charges of
21 misconduct or delinquency, or voluntarily within 2
22 years prior to meeting the age and/or service require-
23 ments in paragraph (2) is entitled to an annuity if he—

24 “(A) was employed by the Canal Zone Gov-
25 ernment or the Panama Canal Company immedi-

1 ately prior to the effective date of exchange of in-
2 struments of ratification or entry into force of the
3 Panama Canal Treaty of 1977; and

4 “(B) has been continuously employed by the
5 Panama Canal Commission or by an Executive
6 agency conducting operations in the Canal Zone
7 or the Republic of Panama since the effective date
8 of exchange of instruments of ratification of the
9 Panama Canal Treaty of 1977 or its entry into
10 force.

11 “(i) An employee of the Panama Canal Commission or
12 of an Executive agency conducting operations in the Canal
13 Zone or Republic of Panama, who is separated from the serv-
14 ice as a result of the implementation of the Panama Canal
15 Treaty of 1977 or related agreements, prior to January 1,
16 2000, involuntarily, except by removal for cause on charges
17 of misconduct or delinquency—

18 “(1) after completing 20 years of service; or

19 “(2) within 2 years prior to meeting the age and/
20 or service requirements in paragraph (2) of subsection
21 (h) of this section is entitled to an annuity if he—

22 “(A) was employed in the Canal Zone by an
23 Executive agency other than the Panama Canal
24 Company or the Canal Zone Government immedi-
25 ately prior to the effective date of exchange of in-

struments of ratification or entry into force of the
Panama Canal Treaty of 1977; and

“(B) has been continuously employed by the
Panama Canal Commission or an Executive
agency conducting operations in the Canal Zone
or the Republic of Panama since the effective date
of exchange of instruments of ratification of the
Panama Canal Treaty of 1977 or its entry into
force.

“(j) For the purpose of subsections (h) and (i) of this
section, Federal employment by or under the United States
District Court for the District of the Canal Zone and by the
Smithsonian Institution shall be treated as employment by an
‘Executive agency’.”.

SEC. 326. EARLY RETIREMENT COMPUTATION.—Sec-
tion 8339 of title 5 of the United States Code is amended—

(1) by inserting in subsection (f), immediately after
“subsections (a)–(e)”, the following: “and (n)”;

(2) by inserting in subsection (i), immediately after
“subsections (a)–(h)”, the following: “and (n)”;

(3) by inserting in subsections (j) and (k)(1), imme-
diately after “subsections (a)–(i)” each time it appears,
the following: “and (n)”;

(4) by inserting in subsection (l), immediately after
“subsections (a)–(k)”, the following: “and (n)”;

1 (5) by inserting in subsection (m), immediately
2 after “subsections (a)–(e)”, the following: “and (n)”;
3 and

4 (6) by adding at the end thereof new subsections
5 (n), (o), and (p) to read as follows:

6 “(n) The annuity of an employee retiring under this sub-
7 chapter who was employed by the Panama Canal Company
8 or Canal Zone Government immediately prior to the entry
9 into force of the Panama Canal Treaty of 1977, who contin-
10 ues in employment with the Panama Canal Commission, or
11 with another Executive agency or the Smithsonian Institu-
12 tion, in the Republic of Panama is computed with respect to
13 the period of that service performed on a continuous basis
14 after the entry into force of the Panama Canal Treaty of
15 1977 by multiplying—

16 “(A) 2½ percent of the employee’s average pay
17 by so much of such service as does not exceed 20
18 years; plus

19 “(B) 2 percent of the employee’s average pay
20 multiplied by so much of such service as exceeds 20
21 years.

22 “(o) The annuity computed under subsection (n) of this
23 section for an employee who was employed as a law enforce-
24 ment officer or firefighter shall be increased by \$8 for each
25 full month of such service in the Republic of Panama after

1 the entry into force of the Panama Canal Treaty of 1977.
2 This increase in annuity shall not be paid with respect to
3 service performed after completion of 20 years as a law en-
4 forcement officer or firefighter.

5 “(p) The annuity computed under this subchapter for an
6 employee who was employed as a law enforcement officer or
7 firefighter by the Panama Canal Company or the Canal Zone
8 Government immediately prior to the effective date of ex-
9 change of instruments of ratification or entry into force of the
10 Panama Canal Treaty of 1977, who does not qualify for re-
11 tirement under section 8336(c) of this title, shall be increased
12 by \$12 for each full month of such service prior to the entry
13 into force of the Panama Canal Treaty of 1977. This increase
14 in annuity shall not be paid with respect to service performed
15 after completion of 20 years as a law enforcement officer or
16 firefighter.”.

17 SEC. 327. LAW ENFORCEMENT, CANAL ZONE CIVIL-
18 IAN PERSONNEL POLICY COORDINATING BOARD, AND RE-
19 LATED EMPLOYEES.—(a) For the purposes of sections 202,
20 203, and 204 of title 2 of the Panama Canal Code, as amend-
21 ed by sections 321, 322, and 323 of this Act, and sections
22 325 and 326 of this Act, the United States Attorney for the
23 District of the Canal Zone and the Assistant United States
24 Attorneys and their clerical assistants, and the United States
25 Marshal for the District of the Canal Zone and his deputies

1 and clerical assistants, shall be treated the same as employ-
2 ees of the Panama Canal Commission.

3 (b) For the purposes of this Act, the Executive Director
4 of the Canal Zone Civilian Personnel Policy Coordinating
5 Board, the Manager, Central Examining Office, and their
6 staffs shall be considered employees of the Panama Canal
7 Company for service prior to the entry into force of the
8 Panama Canal Treaty of 1977 and as employees of the
9 Panama Canal Commission for service on or after that date.

10 SEC. 328. (a) Chapters 81 (Compensation for Work In-
11 juries), 83 (Retirement), 87 (Life Insurance), and 89 (Health
12 Insurance) of title 5 of the United States Code are inapplica-
13 ble to persons who are not citizens of the United States, who
14 are hired by the Panama Canal Commission after the effec-
15 tive date and who are covered by the Social Security System
16 of the Republic of Panama pursuant to the Panama Canal
17 Treaty of 1977 and related agreements.

18 (b) In section 8701 of title 5 of the United States Code,
19 the definition of "employee" in subsection (a) is amended by
20 revising paragraph (B) to read as follows:

21 "(B) an employee who is not a citizen or national
22 of the United States and whose permanent duty station
23 is outside the United States, unless such person was an
24 employee for the purpose of this chapter on the day
25 before the effective date by virtue of service with a

1 Federal agency in the Canal Zone, or the Smithsonian
2 Institution.”.

3 (c) In section 8901 of title 5 of the United States Code,
4 the definition of employee in subsection (1) is amended by
5 revising paragraph (ii) to read as follows:

6 “(ii) an employee who is not a citizen or national
7 of the United States and whose permanent duty station
8 is outside the United States unless such person was an
9 employee for the purpose of this chapter on the day
10 before the effective date by virtue of service with a
11 Federal agency in the Canal Zone, or the Smithsonian
12 Institution.”.

13 SEC. 329. NON-UNITED STATES CITIZEN RETIRE-
14 MENT UNDER SPECIAL TREATY PROVISIONS.—(a) Under
15 such regulations as the President may prescribe, there shall
16 be paid to the Social Security System of the Republic of
17 Panama, out of funds deposited in the Treasury of the United
18 States to the credit of the Civil Service Retirement Fund
19 under section 8334(a)(2) of title 5 of the United States Code,
20 such sums of money as may be necessary to aid in the pur-
21 chase of a retirement equity in that System for each person
22 who is separated from employment with the Panama Canal
23 Company, the Canal Zone Government, or the Panama
24 Canal Commission, as the result of the implementation of the
25 Panama Canal Treaty of 1977 or related agreements, and

1 becomes employed under the Social Security System of the
2 Republic of Panama through the transfer of a function or
3 activity to the Republic of Panama from the United States or
4 through a job placement assistance program, provided such
5 person—

6 (1) has been credited with at least five years of
7 Federal service under the United States Civil Service
8 Retirement System;

9 (2) is not eligible for an immediate retirement an-
10 nuity, and does not elect a deferred annuity under the
11 United States Civil Service Retirement System; and

12 (3) elects to withdraw the entire amount of his
13 contributions to the United States Civil Service Retire-
14 ment System and transfer it to the Social Security
15 System of the Republic of Panama pursuant to the
16 special regime referred to in paragraph 3 of Article
17 VIII of the Agreement in Implementation of Article
18 III of the Panama Canal Treaty of 1977.

19 (b) The sums of money made available under subsection
20 (a) shall not exceed, in any case, the amount of the employee
21 contribution withdrawn from the fund and paid over to the
22 Panamanian Social Security System.

23 (c)(1) Pursuant to paragraph 2(b) of Annex C to the
24 Agreement in Implementation of Article IV of the Panama
25 Canal Treaty of 1977, there are authorized to be appropri-

1 ated such sums of money as may be necessary to purchase a
2 nontransferable deferred annuity for the benefit of each em-
3 ployee of the United States Forces, including employees of
4 all nonappropriated fund activities of the Department of De-
5 fense, in the Republic of Panama—

6 (A) who is not a citizen of the United States of
7 America;

8 (B) who was employed prior to and is employed
9 upon the effective date by an instrumentality of the
10 United States Government in the Republic of Panama
11 (including, in the case of employment prior to such
12 date, the former Canal Zone);

13 (C) who, for any period of his or her employment
14 with that instrumentality of the United States Govern-
15 ment prior to the effective date was not covered by a
16 retirement program for the full period of employment;

17 (D) who, on the effective date is under a retire-
18 ment system provided by the United States or an in-
19 strumentality of the United States Government, or
20 would have been eligible to be under a retirement
21 system of such instrumentality had one been available
22 during previous creditable service; and

23 (E) who, on the effective date has at least five
24 years of creditable service.

1 (2) The President of the United States, or his designee,
2 shall pay out of the general funds of the United States Treas-
3 ury such sums as are appropriated pursuant to subsection
4 (c)(1) of this section in accordance with such regulations as
5 the President or his designee may prescribe.

6 (3) The annuity referred to in subparagraph (c)(1) above
7 will cover retroactively, from the effective date, all periods of
8 creditable service of such persons with United States Gov-
9 ernment instrumentalities in the Republic of Panama (includ-
10 ing the former Canal Zone) during which such persons were
11 not covered by an appropriate retirement program.

12 (4) Neither the United States Government nor its in-
13 strumentalities is required to furnish or to pay for retirement
14 coverage for the individuals referred to in subparagraph (c)(1)
15 above in the Social Security System of the Republic of
16 Panama for periods of employment with the United States
17 Government or its instrumentalities prior to the effective
18 date.

19 SEC. 330. (a) Section 5316(87) of title 5 of the United
20 States Code is amended by striking out "Governor of the
21 Canal Zone" and substituting in lieu thereof "Administrator
22 of the Panama Canal Commission".

23 (b) Section 6322(a) of title 5 of the United States Code
24 is amended by deleting the words "the Canal Zone, or", by
25 inserting a comma in place of the period after "the Trust

1 Territory of the Pacific Islands” at the end of the same sen-
2 tence, and by adding thereafter “or the Republic of
3 Panama.”.

4 (c) Subchapter III of chapter 59 of title 5 of the United
5 States Code, pertaining to Overseas Differentials and
6 Allowances, is inapplicable to employees assigned to work in
7 the Republic of Panama for the Panama Canal Commission
8 or an executive agency which makes an election under sec-
9 tion 142(b) of title 2 of the Panama Canal Code.

10 (d) References to the Canal Zone in the following sec-
11 tions of title 5 of the United States Code shall be deemed to
12 refer to areas in the Republic of Panama used or regulated by
13 the United States pursuant to the Panama Canal Treaty of
14 1977 and related agreements:

15 (1) section 5595(a)(2)(iii);

16 (2) section 5724a(a); and

17 (3) section 8102(b).

18 (e) Section 1(b) of the Act of April 14, 1966 (20 U.S.C.
19 903(c)) and section 6(a) of the Act of July 17, 1959 (20
20 U.S.C. 904(a)(2)) are inapplicable to teachers who are em-
21 ployed by the Canal Zone Government school system imme-
22 diately prior to the effective date and are transferred to the
23 Department of Defense Overseas Dependent School System.

24 (f) Section 5102(c)(12) of title 5 of the United States
25 Code is amended to read as follows: “Federal employees

1 whose pay is fixed under authority and regulations of the
2 Panama Canal Employment System.”.

3 CHAPTER 3—POSTAL MATTERS

4 SEC. 341. POSTAL SERVICE.—(a) The postal service
5 established and governed by chapter 73 of title 2 of the
6 Panama Canal Code shall be discontinued upon the effective
7 date.

8 (b) The provisions of chapter 73 relating to postal-sav-
9 ings deposits, postal-savings certificates, postal money
10 orders, and the accounting for funds shall continue to apply
11 for the purpose of meeting the obligations of the United
12 States concerning outstanding postal savings and money
13 orders and disposition of funds.

14 (c) The Panama Canal Commission shall take posses-
15 sion of and administer the funds of the postal service and
16 shall assume its obligations. The Commission and the United
17 States Postal Service are authorized to enter into agreements
18 for the transfer of funds or property and the assumption of
19 administrative rights or responsibilities, with respect to the
20 outstanding obligations of the postal service.

21 (d) Mail addressed to the Canal Zone from or through
22 the continental United States may be routed by the United
23 States Postal Service to the military post offices of the
24 United States Forces in the Republic of Panama. Such mili-
25 tary post offices shall provide the required directory services

1 and shall accept such mail to the extent permitted under the
2 Panama Canal Treaty of 1977 and related agreements. The
3 Panama Canal Commission is authorized and directed to fur-
4 nish personnel, records, and other services to said military
5 post offices to assure wherever appropriate the proper distri-
6 bution, rerouting, or return of said mail.

7 (e)(1) The words "Except as provided in the Canal Zone
8 Code, the" in the second sentence of section 403(a) of title
9 39 of the United States Code are revised to read "The".

10 (2) The words "each post office in the Canal Zone
11 postal service," in section 3402(a) of title 39 of the United
12 States Code are revised to read "each military post office of
13 the United States Forces in the Republic of Panama" and
14 section 3402(b) of title 39 of the United States Code is de-
15 leted.

16 (3) Section 3682(b)(5) of title 39 of the United States
17 Code is amended by striking the words "the Canal Zone
18 and".

19 (4) Section 3401(b) of title 39 of the United States Code
20 is amended by inserting the word "or" before the words "the
21 Virgin Islands" and by striking the words "or the Canal
22 Zone".

23 TITLE IV—COURTS AND RELATED FUNCTIONS

24 SEC. 401. CONTINUATION OF CODE AND OTHER

25 LAWS.—(a) Except as otherwise provided in this Act, the

1 provisions of the Panama Canal Code, as amended, and other
2 laws applicable in the Canal Zone prior to the entry into
3 force of the Panama Canal Treaty of 1977 by virtue of the
4 territorial jurisdiction of the United States in the Canal Zone
5 shall continue in force only for the purpose of the exercise of
6 the authority vested in the United States by that Treaty and
7 related agreements.

8 (b) None of the provisions or laws referred to in subsec-
9 tion (a) shall be construed as regulating, or providing authori-
10 ty to regulate, any matter as to which the United States may
11 not exercise jurisdiction under the Panama Canal Treaty of
12 1977 and related agreements.

13 SEC. 402. JURISDICTION DURING TREATY TRANSI-
14 TION PERIOD.—(a) The Congress of the United States finds
15 that Article XI of the Panama Canal Treaty of 1977 pre-
16 scribes certain special provisions governing the jurisdiction of
17 the United States in the Republic of Panama during a transi-
18 tion period of thirty months beginning upon the date the
19 Panama Canal Treaty of 1977 enters into force.

20 (b) Notwithstanding inconsistent provisions of the
21 Panama Canal Code or any other law, the jurisdiction of the
22 district court and magistrates' courts established pursuant to
23 title 3 of the Panama Canal Code shall be limited as provided
24 by Article XI of the Panama Canal Treaty of 1977.

1 (c) For the purposes of the exercise of the jurisdiction
2 described in subsection (b), the terms "United States citizen
3 employees", "members of the United States Forces", "civil-
4 ian component", and "dependents" shall be construed as
5 they are defined in the Panama Canal Treaty of 1977 and
6 related agreements. Similarly, the term "areas and installa-
7 tions made available for the use of the United States" shall
8 be construed to mean (1) the Canal operating areas and hous-
9 ing areas described in Annex A to the Agreement in Imple-
10 mentation of Article III of that Treaty, (2) the Ports of
11 Balboa and Cristobal described in Annex B to that Agree-
12 ment, and (3) the Defense Sites and Areas of Military Co-
13 ordination described in Annex A to the Agreement in Imple-
14 mentation of Article IV of that Treaty.

15 SEC. 403. DIVISIONS AND TERMS OF DISTRICT
16 COURT.—(a) The United States District Court for the Dis-
17 trict of the Canal Zone is authorized to conduct its affairs at
18 such places within the areas made available for the use of the
19 United States under the Panama Canal Treaty of 1977 and
20 related agreements, and at such times, as the district judge
21 may designate by rule or order.

22 (b) Sections 2 and 3 of title 3 of the Panama Canal
23 Code are repealed.

24 SEC. 404. TERM OF CERTAIN OFFICES.—Notwith-
25 standing the provisions of sections 5, 41, 45, and 82 of title 3

1 of the Panama Canal Code, the term of office of the district
2 judge, magistrate, United States attorney or United States
3 marshal appointed after the date of enactment of this Act
4 shall extend for a period of thirty months beyond the date the
5 Panama Canal Treaty of 1977 enters into force, and be sub-
6 ject to such extension of time as may be provided for disposi-
7 tion of pending cases by agreement between the United
8 States and the Republic of Panama pursuant to the last sen-
9 tence of paragraph 7 of Article XI of the Panama Canal
10 Treaty of 1977.

11 SEC. 405. RESIDENCE REQUIREMENTS.—Sections
12 5(d), 7(d), 41(d), and 45(d) of title 3 of the Panama Canal
13 Code, the second sentence of section 42 of that title, and the
14 second sentence of section 82(c) of that title, which require
15 that certain court officials reside in the Canal Zone, are re-
16 pealed.

17 SEC. 406. (a) Section 6 of title 3 of the Panama Canal
18 Code is amended to read as follows:

19 “SEC. 6. SPECIAL DISTRICT JUDGE.—The chief judge
20 of the judicial circuit of which the district court is a part may
21 designate and assign a special district judge to act when nec-
22 essary:

23 “(1) during the absence of the district judge;

1 “(2) during the district judge’s disability or dis-
2 qualification, because of sickness or otherwise, to dis-
3 charge his duties; or

4 “(3) when the office of district judge is vacant.”.

5 (b) Each such designation and assignment by the chief
6 judge shall be made in accordance with chapter 13 of title 28
7 of the United States Code, which shall be deemed to apply
8 for such purposes.

9 SEC. 407. MAGISTRATES’ COURTS.—(a) The two mag-
10 istrates’ courts established pursuant to section 81 of title 3 of
11 the Panama Canal Code and existing immediately preceding
12 the date upon which the Panama Canal Treaty of 1977
13 enters into force shall continue in operation for thirty months
14 from that date unless discontinued during that period as oth-
15 erwise provided by this section.

16 (b) During the period referred to in subsection (a), one
17 or both magistrates’ courts, together with the positions of
18 magistrate and constable corresponding thereto, may be abol-
19 ished by the President or his designee if in his judgement the
20 workload is insufficient to warrant continuance of either or
21 both courts. If one of the courts is so abolished, the remain-
22 ing magistrate’s court shall exercise the jurisdiction that oth-
23 erwise would have been exercised by the abolished court and
24 shall take custody of and administer all its records.

1 (c) If both magistrates' courts are abolished pursuant to
2 subsection (b), the following provisions shall thereafter apply:

3 (1) The district court shall exercise the jurisdic-
4 tion of the magistrates' courts.

5 (2) All records of the magistrates' courts shall be
6 deemed records of the district court.

7 (3) A criminal action that otherwise would have
8 come within the original jurisdiction of the magistrates'
9 courts shall be instituted in the district court by a com-
10 plaint executed pursuant to section 3701 of title 6 of
11 the Panama Canal Code, and the law and rules appli-
12 cable in the district court shall thereafter apply. All
13 other criminal actions shall be instituted in the district
14 court by the filing in each case of an information pur-
15 suant to chapter 213 of title 6 of the Panama Canal
16 Code.

17 (4) The requirement of and procedures for prelimi-
18 nary examinations under section 172 of title 3 and sec-
19 tions 3801 through 3806 of title 6 of the Panama
20 Canal Code shall not apply.

21 SEC. 408. Section 543 of title 3 of the Panama Canal
22 Code is amended to read as follows:

23 "SEC. 543. OATH.—Before receiving a certificate the
24 applicant shall take and subscribe in court an appropriate
25 oath prescribed by the district judge."

1 SEC. 409. TRANSITION AUTHORITY.—Except as ex-
2 pressly provided to the contrary in this Act, in any other
3 statute, in the Panama Canal Treaty of 1977 and related
4 agreements, or by Executive order, any authority necessary
5 to the exercise during the transition period of the rights and
6 responsibilities of the United States specified in Article XI of
7 the Panama Canal Treaty of 1977 shall be vested in the
8 Panama Canal Commission.

9 SEC. 410. SPECIAL IMMIGRANTS.—(a) Section
10 101(a)(27) of the Immigration and Nationality Act (8 U.S.C.
11 1101(a)(27)) relating to the definition of special immigrant, is
12 amended—

13 (1) by striking out “or” at the end of subpara-
14 graph (C);

15 (2) by striking out the period at the end of sub-
16 paragraph (d) and inserting in lieu thereof a semicolon;
17 and

18 (3) by inserting after subparagraph (D) new sub-
19 paragraphs (E) and (F) to read as follows:

20 “(E) an immigrant who is an employee of the
21 Panama Canal Company or Canal Zone Government,
22 who is resident in the Canal Zone on the effective date
23 of the exchange of instruments or ratification of the
24 Panama Canal Treaty of 1977, and who has performed

1 faithful service for one year, or more, and his spouse
2 and children who accompany or follow to join him; or
3 “(F) an immigrant, and his spouse and children
4 who accompany or follow to join him, who is a Pana-
5 manian national and (i) who, prior to the date of entry
6 into force of the Panama Canal Treaty of 1977, has
7 been honorably retired from United States Government
8 employment in the Canal Zone (or former Canal Zone)
9 with a total of fifteen years, or more, of faithful service
10 or (ii) who, on the date of entry into force of the
11 Panama Canal Treaty of 1977, has been a faithful em-
12 ployee of the United States Government in the Canal
13 Zone (or former Canal Zone) for fifteen years or more
14 and who subsequently is honorably retired from such
15 employment.”.

16 (b) Section 212(d) of such Act (8 U.S.C. 1182(d)), relat-
17 ing to waivers of conditions of inadmissibility to the United
18 States, is amended by adding after paragraph (8) new para-
19 graphs (9) and (10) to read as follows:

20 “(9) The provisions of paragraph (7) of subsection (a)
21 shall not be applicable to any alien who is seeking to enter
22 the United States as a special immigrant under subparagraph
23 (E) or (F) of section 101(a)(27).

24 “(10) The provisions of paragraph (15) of subsection (a)
25 shall not be applicable to any alien who is seeking to enter

1 the United States as a special immigrant under subparagraph
2 (E) or (F) of section 101(a)(27) and who applies for immigra-
3 tion no later than thirty calendar months after the date the
4 Panama Canal Treaty of 1977 enters into force.”.

5 SEC. 411. PRISONS; PAROLE; PARDON.—(a) Subsec-
6 tion (c) of section 6503 of title 6 of the Panama Canal Code
7 is amended to read as follows:

8 “(c) Pursuant to the provisions of section 5003 of title
9 18 of the United States Code, the Governor shall contract
10 with the Attorney General for the transfer to the custody of
11 the Attorney General of prisoners sentenced by the United
12 States District Court for the District of the Canal Zone to
13 terms of imprisonment in excess of one year.”.

14 (b) Upon entry into force of the Panama Canal Treaty of
15 1977—

16 (1) all prisoners then imprisoned in United States
17 prisons pursuant to contracts entered into under sub-
18 section (c) of section 6503 of title 6 of the Panama
19 Canal Code shall be committed to the custody of the
20 Attorney General as if committed in accordance with
21 part III of title 18 of the United States Code;

22 (2) all persons convicted of offenses in the United
23 States District Court for the District of the Canal
24 Zone, and sentenced to terms of imprisonment of one

1 year or less, shall be committed to the custody of the
2 Panama Canal Commission;

3 (3) the Panama Canal Commission shall prescribe,
4 and from time to time may amend, regulations provid-
5 ing for the management of prisoners in the jails located
6 in the areas and installations made available for the
7 use of the United States pursuant to the Treaty, in-
8 cluding provisions for treatment, care, assignment for
9 work, discipline, and welfare;

10 (4) sections 6501 through 6505 of title 6 of the
11 Panama Canal Code are repealed; and

12 (5) chapter 355 of title 6 of the Panama Canal
13 Code is repealed.

14 (c) After entry into force of the Panama Canal Treaty of
15 1977, all persons convicted of offenses in the United States
16 District Court for the District of the Canal Zone, and sen-
17 tenced to terms of imprisonment in excess of one year, shall
18 be committed to the custody of the Attorney General pursu-
19 ant to parts III and IV of title 18 of the United States Code.

20 TITLE V—MISCELLANEOUS PROVISIONS

21 SEC. 501. HEALTH DIRECTOR; HOSPITALS.—(a) In
22 chapter 57 of title 5 of the Panama Canal Code, references to
23 “hospitals”, to the “Health Bureau”, and to the “health di-
24 rector”, shall be deemed to be, respectively, to the hospitals
25 operated by the United States in the Republic of Panama

1 after the effective date, to the organizational unit operating
2 such hospitals, and to the senior official in charge of such
3 hospitals.

4 (b) In section 4784 of title 6, section 2 of title 7, and
5 sections 32, 35 through 38 of title 8 of the Panama Canal
6 Code, references to the health director shall be deemed to be
7 to the senior official in charge of the hospitals operated by
8 the United States in the Republic of Panama after the effec-
9 tive date.

10 SEC. 502. DISINTERMENT, TRANSPORTATION, AND
11 REINTERMENT OF REMAINS.—(a) There are hereby author-
12 ized to be appropriated such sums as may be necessary to
13 carry out the purposes and provisions of reservation 3 to the
14 Resolution of Ratification of the Treaty Concerning the Per-
15 manent Neutrality and Operation of the Panama Canal,
16 adopted by the United States Senate on March 16, 1978,
17 said sums to be made available to those agencies that are
18 directed and empowered by the President of the United
19 States to carry out such purposes and provisions.

20 (b) With regard to remains that are to be reinterred in
21 the United States, the United States will not bear the cost of
22 funeral home services, vaults, plots, or crypts unless other-
23 wise provided for by law.

24 SEC. 503. EFFECTIVE DATE.—(a) Except as otherwise
25 provided in subsection (b) of this section, the provisions of

1 this Act shall take effect on the effective date of the Panama
2 Canal Treaty of 1977.

3 (b) Sections 231, 321, 322, 325, 326, 404, 410, 411,
4 and 502 of this Act shall become effective upon the date of
5 enactment of this Act.

○

DEPARTMENT OF THE ARMY
WASHINGTON, D.C. 20310

5 APR 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Reference is made to your request to the Secretary of Defense for views of the Department of Defense on H.R. 1716, 96th Congress, a bill "To implement the Panama Canal Treaty of 1977 and related agreements, and for other purposes." The Department of the Army has been assigned responsibility for expressing the views of the Department of Defense on this bill.

The title of the bill states its purpose.

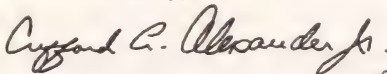
The Department of the Army on behalf of the Department of Defense favors the bill, which was submitted by the Administration.

The Panama Canal Treaty of 1977 will enter into force on October 1, 1979. When it does, the Canal Zone, which has existed under United States jurisdiction since its creation in 1904, will be disestablished and the Republic of Panama will assume plenary jurisdiction over that area in accordance with the terms of the treaty. H.R. 1716 provides for the creation of a new United States Government agency to operate the Panama Canal when the present Canal agencies cease operations. It further provides for the effective accomplishment of United States responsibilities during the early transition period of the Panama Canal Treaty.

This report has been coordinated within the Department of Defense in accordance with procedures prescribed by the Secretary of Defense.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee, and that enactment of this bill would be in accord with the program of the President.

Sincerely,



Clifford L. Alexander, Jr.





DEPARTMENT OF STATE

Washington, D.C. 20520

MAR 29 1979

Dear Mr. Chairman:

The Secretary has asked me to respond to your letter of February 6 requesting comments on H.R. 1716, a bill to implement the Panama Canal Treaty of 1977 and related agreements, and for other purposes.

We appreciate your co-sponsorship of H.R. 1716, a bill submitted by the President to the Speaker of the House of Representatives on January 23. The President's letter pointed out the importance of the proposed legislation to the exercise of our rights under the Treaty and to the fulfillment of our international obligations. Administration witnesses appearing before the Panama Canal Subcommittee and other committees will continue to address in detail the various aspects of the proposed bill.

We look forward to close cooperation with you and other key members of the Congress in achieving the early enactment of H.R. 1716.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report, and that enactment of H.R. 1716 would be in accord with the President's Program.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

The Honorable
John M. Murphy, Chairman,
Committee on Merchant Marine
and Fisheries,
House of Representatives.

96TH CONGRESS
1ST SESSION

H. R. 1958

To protect the interests and express wishes of the taxpayers of the United States as espoused by the United States Senate in its ratification of the Panama Canal Treaty of 1977; to insure domestic harmony; to assist the United States Treasury in providing for a balanced Federal budget; to require that all funds used to implement the Panama Canal Treaty of 1977 be expended only with the express consent of the Congress of the United States; and to require that no territory or other property of the United States in the Panama Canal Zone be transferred to the Republic of Panama unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 8, 1979

Mr. HANSEN introduced the following bill; which was referred jointly to the Committees on Merchant Marine and Fisheries and Foreign Affairs

A BILL

To protect the interests and express wishes of the taxpayers of the United States as espoused by the United States Senate in its ratification of the Panama Canal Treaty of 1977; to insure domestic harmony; to assist the United States Treasury in providing for a balanced Federal budget; to require that all funds used to implement the Panama Canal Treaty of 1977 be expended only with the express consent of the Congress of the United States; and to require that no territory or other property of the United States in the

Panama Canal Zone be transferred to the Republic of Panama unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be referred to as the "Taxpayer Relief
4 Amendments to Panama Treaty Legislation".

5 I. All previous and future expenses incurred by the
6 United States to implement the Panama Canal Treaties of
7 1977 shall be treated as an expense of the Panama Canal
8 Commission. The Commission shall make full reimbursement
9 to the United States Treasury for all such expenses incurred.

10 II. No payments or any amount thereof to the Republic
11 of Panama by the United States as guaranteed by article
12 XIII, paragraph 4, sections (a) through (c) and article III,
13 paragraph 5 of the Panama Canal Treaty of 1977 will be
14 paid out of the general or any other revenues of the United
15 States Treasury.

16 III. No payments shall be made to the Republic of
17 Panama or the Panama Canal Commission except from the
18 separate account created in section VI of this Act. No gener-
19 al or any other revenues of the United States may be deposit-
20 ed in said account.

21 IV. The present cash assets of the Panama Canal Com-
22 pany will be immediately paid to the United States Treasury

1 and applied to the Canal Company's outstanding debt to the
2 people of the United States.

3 V. The Panama Canal Commission is hereby directed to
4 continue paying off its outstanding debt to the United States
5 Treasury on an annual basis, the last payment to be made by
6 December 1999. Such payments shall be included as an oper-
7 ating cost of the Panama Canal Commission.

8 VI. Section 203: Subsection (g) of section 62 of title 2
9 of the Panama Canal Code is amended to read as follows:

10 "(g) The Panama Canal Commission shall pay all canal
11 operating revenues into a separate account in the Treasury of
12 the United States and shall, only when expressly authorized
13 by Act of Congress on an annual basis, pay to the Republic
14 of Panama those payments required under paragraph 4 of
15 article XIII of the Panama Canal Treaty of 1977."

16 VII. New Section 214: The General Accounting Office
17 shall monitor all costs incurred by the Panama Canal Com-
18 mission. It shall determine the reasonable costs that would
19 have been incurred by the commission had it continued to
20 operate as the Panama Canal Company under United States
21 direction. The General Accounting Office shall determine the
22 difference in cost to the American taxpayer between annual
23 payments to Panama under this legislation and those annual
24 payments that would have been incurred under the previous-
25 ly existing system of operation and report on such differences

1 to the Congress not later than thirty days after the end of
2 each fiscal year. Such costs shall include operating cost in-
3 creases as well as increased costs to consumers in all goods
4 due to increases in canal tolls.

5 VIII. No funds of the United States (whether appropri-
6 ated or nonappropriated), including any funds under the con-
7 trol of any department, agency, or other instrumentality of
8 the United States (including the Panama Canal Company and
9 the Canal Zone Government), may be used to implement the
10 Panama Canal Treaty of 1977 in any way, either directly or
11 indirectly, or to take any action in preparation for such im-
12 plementation unless the use of such funds for that purpose
13 has been expressly authorized in an appropriation Act en-
14 acted by the Congress after the enactment of this Act.

15 IX. No right, title, or interest of the United States (or of
16 any department, agency, or other instrumentality of the
17 United States, including the Panama Canal Company and the
18 Canal Zone Government) with respect to any real property,
19 or improvements thereon, in the Canal Zone may in any way
20 be transferred (whether by conveyance, relinquishment of
21 control, or any other means) to the Republic of Panama pur-
22 suant to the Panama Canal Treaty of 1977 unless such
23 transfer is expressly authorized by an Act of Congress en-
24 acted after the enactment of this Act.

5

1 X. The prohibitions contained in this Act shall apply
2 notwithstanding any other provision of law, including (1) any
3 provision authorizing transfers of funds for contingency pur-
4 poses, or waivers of prohibitions, (2) any provision authoriz-
5 ing transfers or conveyances of property or property interests
6 of the United States, and (3) any provision of the Panama
7 Canal Treaty of 1977 which might be construed to authorize,
8 require, or otherwise provide for, the obligation or expendi-
9 ture of funds, or the transfer of property.

10 XI. Notwithstanding the provisions of the Panama
11 Canal Treaty of 1977, the Panama Canal Company and
12 Canal Zone Government under the Canal Zone Code of 1977
13 shall not cease to exist and shall not cease operations with
14 respect to the Panama Canal and the Canal Zone except
15 pursuant to an Act of Congress.

16 XII. As used in this Act, the term "Panama Canal
17 Treaty of 1977" means the Panama Canal Treaty between
18 the United States of America and the Republic of Panama
19 signed September 7, 1977, and any agreement relating to or
20 entered into in conjunction with that treaty, including any
21 agreement or other arrangement with respect to the furnish-
22 ing of assistance by the United States to or for the Republic
23 of Panama.



DEPARTMENT OF STATE

Washington, D.C. 20520

APR 11 1979

Dear Mr. Chairman:

The Secretary has asked me to thank you for your letter dated February 14 which requested comments on H.R.1958, a bill concerning the implementation of the Panama Canal Treaties of 1977.

Under the Panama Canal Treaties approved by the Senate last April, the United States will retain operational control of the Canal and primary responsibility for its defense until the end of this century, with Panamanian participation. The Treaties, which will enter into effect on October 1, 1979, provide the United States with extensive rights and obligations with respect to the Canal. To be in a position to exercise these rights in a manner which will fully protect our interests in the Canal appropriate implementing legislation is required.

The effect of the enactment of H.R. 1958 would to be two-fold: it would prevent the United States from exercising its rights and discharging its responsibilities under the Panama Canal Treaty until certain actions are taken by Congress, and it would place various restrictions on the financial operations of the Panama Canal Commission, the new entity which will operate the Canal. Specifically, the proper execution of the Treaty would be prevented as follows: Section VIII of the bill prohibits the expenditure of funds to implement or prepare for implementation of the Treaty, except pursuant to a subsequently enacted statute; Section IX seeks to prevent the transfer of U.S. property to Panama subject to the same condition; and Section XI seeks to continue the existence and operations of the Canal Zone Government and the Panama Canal Company notwithstanding the terms of the Treaty.

The Honorable

John M. Murphy, Chairman,
Committee on Merchant Marine and Fisheries,
House of Representatives.

Provisions of this sort serve no useful purpose. If the intent is to preclude certain steps from occurring until implementing legislation is passed, the appropriate course is to address the implementing legislation itself, which is presently before the Congress in the form of H.R.111, H.R.454 and H.R.1716. The Treaty will enter into force on October 1 of this year. The objective of the United States should be to enact legislation to fully protect its interests, rather than, as H.R.1958 seeks, to erect barriers which will serve only to disable the United States in exercising its right to operate the Canal after October 1.

The financial provisions of H.R.1958 in general will not contribute to the efficient operation of the Canal. Section I would require the Commission (and thus shippers and consumers) to bear all expenses incurred in implementing the Treaties. The approach taken in H.R.1716 (the Administration bill), and, under a somewhat different formula, in H.R.111, is to pay all expenses related to the Canal operation (including annuity payments to Panama) from toll revenues. Other expenses, which do not relate to Canal operations, such as defense costs and the cost of implementing the Randolph (cemeteries) Reservation, would be financed by the general fund of the United States Treasury. We believe this is a more realistic and just allocation of costs.

Section II of H.R.1958 precludes the payment of funds to Panama out of general or other revenues of the United States Treasury. If the intention is to require that these payments be made from Canal revenues, the Department does not object since the Administration bill directs that payments to Panama be made by the Commission from such revenues.

Sections III and VI of H.R.1958 appear intended to segregate Canal revenues from general revenues of the United States. The same result is accomplished by H.R. 1716 which creates the Commission as a government corporation - thus requiring that its expenses be met from its revenues rather than from general revenues of the United States. Congressional authorization to expend these revenues would be obtained through annual approval of the Commission's budget program under 31 USC 849.

Sections IV and V refer to a "debt" owed to the United States by the Canal Company and its successor, the Commission. There is no such debt. There is an interest-bearing net direct investment which represents a valuation of assets made in the 1950s. This valuation, currently at \$319 million, is the basis for calculation of the annual interest payment to the U.S. Treasury. Depletion of the Company's cash reserve to repay the "debt", as required by Section IV, would deprive the new Commission of needed working capital and impair its operations. Repayment of the "debt" from toll revenues during the life of the Treaty would force an increase in toll rates, a cost chargeable, to some extent, to U.S. consumers. The returns on an investment in a public works project are the benefits derived from the use of the facility. In the case of the Canal, these have been and continue to be of immense benefit to the United States.

Section VII of H.R.1958 provides for an audit by the General Accounting Office of the costs of the Commission. The Government Corporation Control Act, which H.R.1716 applies to the Commission, requires a much more detailed and realistic audit of the costs and revenues of the Commission.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations

96TH CONGRESS
1ST SESSION

H. R. 2522

To prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 1979

Mr. PAUL introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To prohibit the use of any United States funds to implement the Panama Canal Treaty of 1977 unless the use of those funds for that purpose is hereafter expressly provided for by the Congress and to prohibit the transfer to the Republic of Panama any territory or other property of the United States in the Canal Zone unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That (a) no funds of the United States (whether appropriated

1 or nonappropriated), including any funds under the control of
2 any department, agency, or other instrumentality of the
3 United States (including the Panama Canal Company and the
4 Canal Zone Government), may be used to implement the
5 Panama Canal Treaty of 1977 in any way, either directly or
6 indirectly, or to take any action in preparation for such im-
7 plementation unless the use of such funds for that purpose
8 has been expressly authorized in an appropriation Act en-
9 acted by the Congress after the enactment of this Act.

10 (b) No right, title, or interest of the United States (or of
11 any department, agency, or other instrumentality of the
12 United States, including the Panama Canal Company and the
13 Canal Zone Government) with respect to any real property,
14 or improvements thereon, in the Canal Zone may in any way
15 be transferred (whether by conveyance, relinquishment of
16 control, or any other means) to the Republic of Panama pur-
17 suant to the Panama Canal Treaty of 1977 unless such
18 transfer is expressly authorized by an Act of Congress en-
19 acted after the enactment of this Act.

20 (c) The prohibitions contained in this Act shall apply
21 notwithstanding any other provision of law, including (1) any
22 provision authorizing transfer of funds between accounts, re-
23 programing of funds, use of funds for contingency purposes,
24 or waivers of prohibitions, (2) any provision authorizing
25 transfers or conveyances of property or property interests of

3

1 the United States, and (3) any provision of the Panama Canal
2 Treaty of 1977 which might be construed to authorize, re-
3 quire, or otherwise provide for, the obligation or expenditure
4 of funds or the transfer of property.

5 (d) Notwithstanding the provisions of the Panama Canal
6 Treaty of 1977, the Panama Canal Company and the Canal
7 Zone Government under the Canal Zone Code of 1977 shall
8 not cease to exist and shall not cease operations with respect
9 to the Panama Canal and the Canal Zone except pursuant to
10 an Act of Congress.

11 (e) Any officer, agent, or employee of the United States
12 who fails to comply with the provisions of this Act shall be
13 subject to a criminal penalty of not less than \$25,000 nor
14 more than \$250,000 for each violation.

15 (f) As used in this Act, the term "Panama Canal Treaty
16 of 1977" means the Panama Canal Treaty between the
17 United States of America and the Republic of Panama,
18 signed September 7, 1977, and any agreement relating to or
19 entered into in conjunction with that treaty, including any
20 agreement or other arrangement with respect to the furnish-
21 ing of assistance by the United States to or for the Republic
22 of Panama.

○

THE AMERICAN BATTLE MONUMENTS COMMISSION

WASHINGTON, D.C. 20314

16 February 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
U. S. House of Representatives
Washington, D. C. 20515

FEB 1 1979
COMMITTEE ON MERCHANT MARINE
AND FISHERIES

Dear Mr. Murphy:

Thank you for the opportunity to comment on H.R. 111, H.R. 454 and H.R. 1716 pertaining to implementation of the Panama Canal Treaty of 1977 and its related agreements. By telephone on February 13, 1979, a member of our staff provided Mr. Terry Modglin, of your staff, with our comments and the financial implications of the bills.

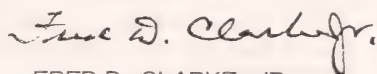
Although we have no specific recommendations on the three bills, our knowledge of the cemetery problems in Panama leads us to recommend H.R. 1716 as the most practical.

By Executive Order 12115, the President has directed the American Battle Monuments Commission to assume responsibility for the operation and maintenance of the American sector of the Corozal Cemetery, effective October 1, 1979. An agreement has been signed with the Republic of Panama for continued operation of Corozal American Cemetery by the American Battle Monuments Commission, after the year 2000.

Providing the funds are made available, it is estimated that upgrading the cemetery to our standards will require approximately five years. Our budget request for FY 1980 is for \$164,000. For the following four years we estimate that our budget should be about \$200,000 per year.

If you have any questions, feel free to contact Colonel Frederick C. Badger, Director of Engineering and Maintenance, telephone 693-6007, at any time.

Sincerely yours,

A handwritten signature in cursive script that reads "Fred D. Clarke, Jr." The signature is written in dark ink and is positioned above the printed name.

FRED D. CLARKE, JR.
Colonel, Infantry
Assistant Secretary



CANAL ZONE GOVERNMENT
BALBOA HEIGHTS, CANAL ZONE
OFFICE OF THE GOVERNOR

March 28, 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D.C. 20515

Dear Mr. Murphy:

This is in response to your requests of January 18 and February 6, 1979 for reports on H.R. 111 and H.R. 1716, two bills designed to implement the Panama Canal Treaty of 1977 and related agreements. Although it is a deviation from normal procedure to comment on more than one legislative proposal at a time, we have received authorization from your Committee to do so in this instance because of the identical purpose of the bills in question.

As you know, the new treaty will enter into force on October 1 of this year. When it does, the Canal Zone, which has existed under United States jurisdiction since its creation in 1904, will be disestablished and the Republic of Panama will assume plenary jurisdiction over that area in accordance with the terms of the treaty. That document requires that, upon entry into force, the present Canal agencies -- the Panama Canal Company and the Canal Zone Government -- cease operations in what is now the Canal Zone; it also states that the United States will carry out its responsibilities to manage, operate and maintain the waterway until the end of the century by means of a new U.S. Government agency called the Panama Canal Commission.

Both H.R. 111, which you have sponsored, and H.R. 1716, prepared by the Administration, are designed to establish this new agency and implement other non-self-executing provisions of the treaty. This report will concentrate on the provisions of each bill which appear to have the greatest potential impact on the efficient operation and financial viability of the Panama Canal.

Employee Provisions

In our view, the most important portions of the two bills are those dealing with Canal employees. As you may appreciate, the last 18 months have been particularly trying for our workforce. Faced with

Honorable John M. Murphy

considerable uncertainty concerning their futures throughout the period of negotiations and, later, during the Senate debates of the new treaties, employees of the Canal agencies nevertheless continued to perform their jobs at their usual high level of efficiency. They are still doing so, even though they do not know what the statute implementing the treaty will ultimately hold in store for them after the legislative process has been completed. The Committee may be assured, however, that the workers in the Canal Zone are intimately familiar with the contents of the two bills dealing with employee rights and benefits, and that they will follow their progress closely.

There do not appear to be any significant differences between H.R. 111 and H.R. 1716 in this area. While we defer to the Office of Personnel Management on the details of those provisions, it would appear appropriate to review some of the major ones because of their importance to our workers and, hence, to the continued, efficient functioning of the Canal organization.

Under Article X of the treaty, the Commission is authorized to pay, over and above basic compensation, additional remuneration to certain categories of employees. Accordingly, section 147 of H.R. 111 and section 305 of H.R. 1716 would authorize the head of U.S. Government agencies operating in Panama to pay overseas recruitment and retention differentials (a) to persons employed by the Company/Government or other U.S. Government agencies in the Canal Zone before October 1, 1979; (b) to those recruited after that date from outside of Panama; and (c) to medical doctors employed by the Department of Defense or the Commission. Both bills fix the ceiling on this differential at 25 percent of the rate of basic compensation paid for the same or similar work performed by U.S. Government employees in the United States.

A differential (currently 15%) has been paid by the Canal for many years and has provided one of the most effective incentives for recruitment and retention of a skilled workforce. Since the need for highly skilled employees not readily available in Panama will continue for the foreseeable future, we consider this provision to be an important one.

Honorable John M. Murphy

With the inevitably significant change which the loss of U.S. jurisdiction will bring, the bills recognize the importance of preserving, to the maximum extent possible, the present quality of life for Canal employees by placing in the law the treaty guarantee that the terms and conditions of employment with the Panama Canal Commission will in general be no less favorable to persons already employed by the Company/Government than those in effect prior to October 1, 1979. These provisions would extend that guarantee to those Company/Government employees who are transferred to other United States Government agencies in Panama as a result of the treaty. The 22 specific conditions of employment which would be protected are listed in section 202 of H.R. 111 and section 321 of H.R. 1716 and include such things as wage rates, reinstatement and restoration rights, injury and death compensation benefits, transportation and repatriation benefits and leave and travel except as modified to provide equity with other employees in the agency to which the employee is transferred.

For those U.S. citizen employees of the Company/Government who are either displaced as a result of the treaty or who decide that they do not want to continue their employment in Panama, the bills (H.R. 111, section 203; H.R. 1716, section 322) would require the Office of Personnel Management to develop and administer a Government-wide program of placement assistance. This provision we view as an equitable one since the great majority of our U.S. citizens signed on with the Canal on the assumption that they could spend their careers living and working under U.S. jurisdiction.

In addition to the recruitment and retention remuneration referred to above, the bills (H.R. 111, section 124; H.R. 1716, section 324) would require that U.S. citizen employees of the Commission be paid an allowance to offset the cost of living increases they will experience as a result of losing military postal, commissary and exchange privileges in October 1984, five years after the treaty enters into force.

Probably the most publicized parts of the proposed bills -- and to many of our employees the most important -- deal with early retirement benefits. Section 205 of H.R. 111 and section 325 of H.R. 1716 would allow employees who are involuntarily separated or scheduled to be separated as a result of implementation of the treaty to retire under

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more liberalized eligibility criteria than are normally available under a major reduction-in-force situation. For example, instead of requiring 25 years of service at any age or 20 years at age 50, with reduced annuity, the bills would require 20 years of service at any age or 18 years at age 48. In addition, the bills would not impose a reduction in annuity because of the age at which the employee retires.

More important to the agency and its employees, however, are those provisions which would recognize the impact of the treaty on living and working conditions by granting a continuing option, throughout the life of the treaty (that is, through 1999), for employees (U.S. and non-U.S. citizens alike) to retire voluntarily under similar liberalized eligibility criteria. To illustrate, an employee could retire voluntarily any time after he attains 23 years of service regardless of age, or after reaching age 48 and 18 years of service. Again, there would be no reduction in annuity because of the age at which the employee retires. Finally, under section 206 of H.R. 111 and section 326 of H.R. 1716, those electing to stay on with the Commission would have their annuities computed at a higher rate than normal.

While the Office of Personnel Management has authorized early optional retirement for Canal workers under existing major RIF provisions, our employees must exercise that option, if at all, between April 1 and September 30, 1979. Because the option is available for a limited period of time prior to treaty effective date, it will not contribute to the retention of our workforce beyond October 1.

As mentioned earlier, many of our employees consider the early retirement provision of the treaty legislation to be the most important one and a good percentage are deferring decision as to their futures until they know what the law will provide on that subject. If enacted in its present form, some will undoubtedly take advantage of its provisions and retire at once. We have high hopes, however, that the continuing option feature -- that is, the fact that the option to retire under the liberalized eligibility and calculation criteria outlined above will remain open throughout the life of the treaty -- will cause the great majority to stay and "give it a try" with the Commission.

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If we are correct in that assessment, this should afford an opportunity for officials of the Commission and the Government of Panama to prove that transfer of jurisdiction can be effected without the kind of adverse consequences which have worried our employees. Assuming this can be done, and we are optimistic in this regard, then we believe that this early retirement option will do more than any other single feature of the legislation toward maintaining a skilled workforce at the Canal. If, on the other hand, the legislation were to be enacted with a significantly less liberal version of the early retirement option in it, we also believe that our ability to retain needed skills would be very seriously curtailed.

It may be worthy of note that there exists what appears to be only a technical difference between the two bills but which may have substantive consequences. In the early retirement and several other employee provisions*, the Administration's bill refers to "the effective date of exchange" of the instruments of ratification of the treaty. As you know, ratification instruments were exchanged on June 16, 1978, but the legally effective date of that exchange will be March 31, 1979, as a result of the so-called Brooke reservation to the Senate resolution of ratification of the treaty. Parallel provisions in H.R. 111 do not contain the word "effective" before the phrase "date of exchange." While we assume that the intent of the drafters of H.R. 111 was the same as that of the Administration -- i.e., to tie eligibility for these employee benefits to March 31, 1979 -- it appears at least possible that H.R. 111, if enacted as drafted, will result in claims by employees for retroactive eligibility for those benefits.

In the area of labor management relations, both bills (H.R. 1716 section 303) would place in the law the treaty's recognition of the right of Commission employees to negotiate collective contracts. The collective bargaining system to be established would be developed along the lines of that contained in Title VII of the Civil Service Reform Act.

Under H.R. 111, not only the Commission but all U.S. agencies operating in the former Canal Zone would be required to prescribe regulations governing labor-management relations which parallel the provisions of Title VII of the

*- See sections 202(a)(1), 203(a)(1) and (b)(1), 205(a)(2) and (b)(2) and 206(p)(1) of H.R. 111. Cf. section 1611(a)(3) where the word "effective" is used.

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Civil Service Reform Act. Paragraph (2) of Article VII of the Agreement in Implementation of Article IV of the treaty provides, however, that the U.S. Forces must establish regulations governing employment of its non-U.S. citizen workers which conform with the general principles of the labor laws of the Republic of Panama. It would thus appear that, if H.R. 111 is enacted as presently drafted, Department of Defense agencies operating in Panama will be subject to two conflicting sets of principles in establishing their labor relations rules.

There is one other provision of the bills which is of special interest to non-U.S. citizen employees in that it would confer special immigrant status on the following persons:

- Non-U.S. citizen employees of the Company or Government who, on the effective date of exchange of instruments of ratification, are residing in the Canal Zone and who have performed faithful service for at least one year;
- Panamanians who, prior to the entry into force of the treaty, have honorably retired from Government service in the Canal Zone with 15 or more years of faithful service; and
- Panamanians who, on the date of entry into force, have been faithfully employed by the U.S. Government in the Canal Zone for at least 15 years and who later honorably retire from that employment.

This special immigrant status would also be extended to the spouse and children of employees in those three categories. The Administration's Bill (section 410) would waive the public charge provision with respect to these people for the thirty-month transition period. This would, we believe, be an adequate period for those dedicated employees, identified above, to immigrate, under the waiver of the public charge provision, to the United States. Under section 1611 of H.R. 111, on the other hand, no time limit would be placed on the waiver. In view of the extraordinary nature of the public charge waiver, we believe the thirty-month limitation is desirable.

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The special immigration provision is intended to afford long-time non-U.S. citizen employees who have spent their careers working with the United States Government on the Isthmus, as well as those residing under U.S. jurisdiction in the Canal Zone, the opportunity to go to the United States if they so desire. This provision would appear to constitute an appropriate expression of appreciation by the U.S. Government for the contribution made by these loyal employees, many of whose ancestors participated in the construction of the waterway.

The Canal Agencies

Before turning to the financial portions of the two bills, it is important that the Committee understand the nature of the present Canal organization. Since 1951, the agency known as the Panama Canal Company has been charged with maintaining and operating the Panama Canal and with conducting business operations incident thereto and incident to the civil government of the Canal Zone. The Company is a corporate agency and instrumentality of the United States and its operations are subject to the Government Corporation Control Act. The agency receives no appropriations, is totally self-sustaining and is required annually to pay interest to the Treasury of the United States on the U.S. Government's net direct investment in the Canal Company, as well as to reimburse the U.S. Government for a portion of the annuity payments to Panama and for the net cost of operation of the Canal Zone Government. The Company is authorized to borrow up to \$40 million from the Treasury, but has never had to actually draw on that authority. The affairs of the Company are managed by a Board of Directors consisting of between 9 and 13 members appointed by the stockholder, who in turn is designated by the President of the United States.

Although the Company is excluded from the Federal Tort Claims Act, it may sue and be sued in its own name. Because of the nature of its operations, claims against the agency for damages sustained by transiting vessels are common. Pursuant to the current Canal Zone Code, the Company is a virtual insurer for accidents occurring to vessels while they are in the locks of the Canal. For accidents occurring outside the locks, the claimant must affirmatively establish negligence on the part of a Company employee before the agency is liable. Vessel accident claimants who are not satisfied with an award of damages may bring suit against the Company in the U.S. District Court in the Canal Zone. Claimants in other than marine accident cases may sue the Company in either the Canal Zone or the District of Columbia.

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The Canal Zone Government, also an independent agency of the United States, is administered by the Governor under the supervision of an officer of the United States designated by the President and is charged with the performance of the various duties connected with the civil government of the Canal Zone, including its protection, health, and sanitation. While the Canal Zone Government is an appropriated fund agency, the Company is required, as noted earlier, to reimburse the U.S. Government for the cost of that agency's operations.

The officer of the United States traditionally designated by the President to supervise the administration of the Canal Zone Government and to serve as stockholder of the Panama Canal Company is the Secretary of the Army. In carrying out those functions, the Secretary acts as the direct representative of the President of the United States. The Governor of the Canal Zone serves, ex officio, as President of the Panama Canal Company.

As a general proposition, the Administration's bill would pattern the Panama Canal Commission after the present Panama Canal Company, making only those changes in organization and functions as are required by the treaty. On the other hand, H.R. 111 would have the Commission take the form of the agency which operated the waterway prior to 1951.

Comparison of Major Financial Provisions

The most striking contrasts between the two bills concern the financial structure which would be established for the Panama Canal Commission. We have noted seven major areas of difference between H.R. 111 and the Administration's bill.

First, in sections 101 and 232, H.R. 111 proposes that the new Canal enterprise be established as an appropriated fund agency, whereas the Administration's version in section 201, would continue for the Commission the corporate form of the Panama Canal Company.

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Second, section 232 of H.R. 111 would require the Commission to deposit tolls and other revenues into the U.S. Treasury as miscellaneous receipts. Since such funds would not be earmarked for the use of the Commission, Congress would have to make appropriations to cover capital and operating needs of the Commission, including payments to Panama required by the treaty. These appropriations would be based on estimates submitted more than a year in advance of the fiscal year in which needed. Normally, increases in costs over those budgeted would require additional appropriation authorization from Congress. In contrast, the Administration's version would require the Commission to continue the present practice of depositing all revenues on a day-to-day basis to a revolving fund account in the U.S. Treasury, except for relatively small amounts which would be retained by the agency to meet its current operating and capital needs. At the same time, the Administration's bill would force the Commission to finance its operating and capital needs from its own revenues.

A third significant difference lies in the fact that section 233 of H.R. 111 would establish through appropriations an emergency fund of \$40 million* which the Commission could draw against, without additional Congressional approval, to defray emergency expenses and to ensure continuous operation of the Canal if funds appropriated for operations and maintenance are insufficient for this purpose. The Administration's version, by continuing the corporate form, would retain for the Commission the Company's present flexibility to meet unexpected needs of any kind out of its own resources and would, in addition, provide the Commission with a line of credit by continuing the Canal agency's \$40 million borrowing authority. The Commission would be required to repay, with interest, any funds borrowed pursuant to that authority. Under H.R. 111, on the other hand, additional deposits to the emergency fund would require appropriations.

*/ While section 233 of the bill states that the amount of this fund would be \$10 million, the section-by-section analysis uses the \$40 million figure. We have been advised informally by the Committee staff that the error is in the bill and that the \$40 million figure is the correct one.

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With regard to accounting policies, H.R. 1716 would continue to subject the Canal enterprise to the Government Corporation Control Act, which requires business-type accounting. Under H.R. 111, the Commission would be required not only to continue business type accounting, but, as provided in section 234* of the bill, to adopt policies and procedures for Government accounting prescribed in the Accounting and Auditing Act of 1950. This would necessitate the maintenance of a supplemental set of books. It should be noted that, under either bill, the agency would be subject to audit by the General Accounting Office.

Concerning depreciation of Canal property, section 210 of H.R. 1716 would transfer the assets of the Company directly to the Commission and authorize their continued depreciation. In our view, this would allow depreciation of new plant assets, except for those financed through a capital surcharge to be included in the tolls base. Section 232 of H.R. 111, on the other hand, would provide for a reversion of all assets to the United States and, although it provides (in section 412) for depreciation as an expense for inclusion in the tolls base, it would appear that depreciation is to be taken on existing plant only; this, however, is not altogether clear.

Although H.R. 111 and the Administration's bill have several cost elements in common for inclusion in the tolls base, section 412 of H.R. 111 provides, in addition; for the inclusion of interest and amortization costs on the investment of the United States in the Canal enterprise, and for inclusion of the costs of the early retirement program. The Administration's version does not envision charging users of the Canal for these costs. On the other hand, that bill does include elements which take into account such special characteristics of the toll-setting process as the matching of costs and revenues over a given period of time, and the desirability of maintaining toll-rate stability over as long a term as possible. Specifically, section 232 of H.R. 1716 provides for the inclusion in the tolls base of any unrecovered past costs and the establishment of reserves for the purpose of matching revenues with expenses. The lack of authority in H.R. 111 to include unrecovered past costs in the tolls base would result in the inability of the Commission to recover resources depleted during periods of operating losses. Without the reserve provision, the Commission could

*/ With regard to section 234 of the bill, it appears that the date "1979" in line 3 on page 53 should read "1977."

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not set rates to cover a multi-year period, since programmed over-recoveries in the first year would go to Panama under the contingent payment requirement, instead of being reserved to cover a programmed underrecovery in the final year of the toll-rate period.

With respect to the contingent payment to Panama, the Administration's bill would also include a provision designed to preserve an adequate level of working capital for the Commission. H.R. 111 does not include such a provision.

Operational Requirements

It is obvious that the primary objective of both H.R. 111 and H.R. 1716 is to provide the best framework for the Commission to operate the Panama Canal at maximum administrative and financial efficiency. Both proposals also envision that the Commission would be financially self-sufficient. The present Canal organization, during its 27 years of existence, has been able to maintain a high degree of stability in its toll rates with no diminution in the quality of its service to shipping. The many changes that will be brought about by the entry into force of the treaty -- such as the disestablishment of the Canal Zone, the transfer of the ports and railroad to Panama, the cessation of retail activities and the increasing participation of Panamanian citizens at all levels of the organization -- will not alter the operating agency's essential nature as a business entity. Neither its role as an international public utility nor its clientele will change.

The treaty requirements for greatly increased payments to Panama will place a greater tolls burden on the users of the Canal, narrowing the leeway which the Canal Company has had for recovering additional operating costs from shipping and making the need for efficient operation that much more urgent. In addition, the treaty requires that the United States turn the Canal over to Panama at the end of 1999 in operating condition. If a burden on the U.S. taxpayer is to be avoided, this requirement will mean that the Commission's operations must remain highly efficient throughout the treaty period.

In summary, the changes to be brought about by the treaty may tend to increase the complexity of operations, but will not change the essential nature of those operations. In our view, therefore, the treaty

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does not provide sufficient basis for requiring a major change in the financial structure of the Canal agency. Moreover, as explained below, it does not appear that Canal operations could be conducted more efficiently by an appropriated fund agency rather than a corporate one.

Underlying practically all of the major differences between the Administration's bill and H.R. 111 is the question of control. The Administration's proposal would retain the operational autonomy of the current corporate structure under the present system of controls exercised by the Congress and the Office of Management and Budget. H.R. 111 would bring the Panama Canal Commission under rigid structures designed for the administration of Government operations generally. Appropriated fund budgeting and accounting is used in government where there is not normally the yardstick of profit by which to measure the results of operations. It concentrates on the control and measurement of disbursements, and it can control them tightly; but the emphasis on disbursements makes it singularly inappropriate for use where revenues are generated through disbursements, and the relationship of the two is vital to the operation. Here it can result in less than optimum efficiency of operation.

The limitations of appropriated fund accounting applied to the Panama Canal operation are recognized by H.R. 111 itself, in that it establishes, in section 233, an emergency fund which the Commission could draw upon to defray emergency expenses and to insure continuous operation of the waterway if funds appropriated for the operation and maintenance of the Canal are insufficient for such purposes. If it is intended that the Commission utilize this fund to accommodate workload surges, changed maintenance requirements, and other unanticipated costs, then some of the problems foreseen under an appropriated fund structure could be alleviated. There is no certainty, however, that such frequent, routine use of the emergency fund, giving the Commission open access to cash for all unforeseen needs, is contemplated or would be tolerated. Our reading of the sectional analysis accompanying H.R. 111 leads us to conclude that access to the emergency fund is intended to be on a more restricted basis than is the use of the borrowing authority. In any event, it appears clear to me that the emergency fund would not be available for treaty payments to Panama. Such restrictions on the Commission's access to the emergency fund would hamper the ability of the agency to carry out its mission.

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The following example illustrates the disadvantages of an appropriated fund process. The normal time lag between the submission of an appropriation is received and spent is more than a year. The corporate type budget submitted by the Company for fiscal year 1978 projected \$304.1 million in operating costs to handle 141.6 million Panama Canal net tons of traffic and all supporting activities. Instead, 157.3 million Panama Canal net tons passed through the Canal, costing \$314.3 million, which was more than covered by the increase in revenues generated by the additional workload. Had the Company been operating under the appropriated fund concept, it would have had to request a supplemental appropriation for the additional manpower and other costs associated with this unexpected traffic upturn. In order not to delay or turn away traffic, the Company would have been forced to effect major reductions in non-transit related areas until that appropriation was granted.

Another problem is foreseen with respect to the Panama Canal net tonnage payments and the contingent payments to Panama required by the treaty. As noted above, in my opinion the emergency fund would not be available to make these payments. In the event that actual tonnage through the Canal exceeds budgetary estimates, the additional money needed to cover the tonnage payment would have to be sought by the Commission through supplemental appropriations. Concerning the contingent payment which, of course, will not be included in the agency's budget, there would be a delay in making the payment to Panama in any year in which revenues exceed expenditures (unless the emergency fund could be used). Appropriations would be needed to meet this obligation. As you may appreciate, the situations just described could result in unnecessary conflicts with the Republic of Panama.

Further recognition of the limitation of appropriated fund accounting is contained in the requirement of H.R. 111 that the Commission keep, in addition to the set of books for appropriated fund accounting, a second set for accrual type profit and loss accounting.

Profit and loss accounting is indispensable to the Commission's operations. It will provide Commission management with timely and accurate financial information so that action can be taken to keep costs in line with revenues; it will provide the Republic of Panama the assurance that the determination that revenues have or have not exceeded expenditures has been done consistently and accurately; and it will provide the Congress with the only true measure of the Canal enterprise's economic condition.

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In short, nothing more than a profit and loss accounting system need be established. In our view, the supplemental set of books that would be required for appropriated fund accounting could be a cumbersome appendage that contributes nothing to the efficient operation of the Canal and, in fact, could provide the basis for controversy with Panama over the contingent payment.

Financial Discipline

There is another major difference between the financial provisions of these two pieces of legislation. The Administration's bill would continue the existing requirement for the Canal to be self-sustaining -- that is, for the agency to live within its resources. Although the Administration's bill continues provisions allowing the Commission to seek appropriations in order to cover losses and to meet capital requirements, such appropriations would be forthcoming only upon the approval of Congress as exceptions to normal procedures. H.R. 111, on the other hand, would provide the Commission with routine, ongoing access to appropriations. If this latter financial concept is adopted, we foresee a potential risk that the link between revenues and expenses may become obscured over time, with the result that the Canal entity, since it is operating from appropriations rather than its own revenues, may become increasingly dependent upon taxpayer subsidy. Sec. 411(b) of H.R. 111, which requires that tolls be set at a level sufficient to cover costs, is not an adequate substitute for the discipline imposed by the corporate form.

This potential loss of self-discipline appears to provide the strongest argument for supporting the provisions of the Administration's version of the treaty legislation dealing with the financial structure of the Commission, rather than those contained in H.R. 111.

Moreover, other elements of existing control are broad. First, the legislation establishing the Company sets forth in considerable detail guidelines for its operation. Second, the agency's budget program is subject to a comprehensive, annual review by the Office of Management and Budget. Third, the Congress is provided the opportunity to examine the Company's operations in detail, and to impose its will for changes, through the annual review of the budget and its justification, both by the Senate and House appropriations committees and in the oversight hearings of the Merchant Marine and Fisheries Committee. Finally, there is the biannual audit by the General Accounting Office of the Company's operations and finances, the results of which are reported to the Congress.

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These provisions for review would be retained in the financial structure established for the Commission by the Administration's bill and they would appear to be adequate to insure effective Congressional control over Canal operations.

Congress, for many years, has incorporated government agencies which function primarily as commercial or business-type entities. The logic of this policy was confirmed by the 1947 Hoover Commission on the Organization of the Executive Branch, which made a government-wide study and produced the recommendation that agencies with "straight-line business activities be incorporated so as to secure greater flexibility in management and simpler accounting, budgeting, and audit methods." In addition, Congress has assured its control over Government corporations through the Government Corporation Control Act, which brings "Government corporations and their transactions and operations under annual scrutiny by the Congress" and provides "current financial control thereof." The incorporation of the Panama Canal Commission would, therefore, be consistent with past Congressional policy.

Past Record of the Canal

There is no better justification for continuation of the government corporation form for the Commission than the record of achievement amassed by the Panama Canal Company from its inception in 1911 to the present. During this period, the Company has been completely self-sufficient financially. Although it is authorized to seek appropriations to cover both losses and capital needs and to borrow up to \$40 million, it has never done so despite a four-year period of operating losses. In fact, during its 27 years of existence, the Company has paid back to the United States Treasury \$40 million as a return on the Government's investment. It has also plowed back \$337 million of internally-generated funds in capital replacements and improvements to Company facilities. Finally, the Company has paid the U.S. Treasury \$311 million in interest on the United States investment in the Canal agency.

There are not many Government agencies that can boast of such a record. The use of the corporate form to carry out the legal requirement that the enterprise live within its resources has had a lot to do with that success, and it provides the best assurance to the U.S. taxpayer that the Canal will continue to be self-sufficient.

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Tolls Outlook*

In the final analysis, the viability of the Canal depends upon the ability and the willingness of world shipping to pay the cost of its operation. Care must be exercised not to overprice the value of the service. The more such costs are added, the greater the risk of driving away traffic.

In that regard, section 412 of H.R. 111 would place in the tolls base provision for interest, amortization of the United States investment in the Canal and the cost of the early retirement program. Our reading of the bill indicates that the investment to be amortized, as well as the base on which interest is to be computed, would be the net direct investment, rather than the full equity of the United States in the waterway.

That is, the investment would not include retained earnings. On the other hand, under our construction of H.R. 111, the net direct investment would include the value of plant assets required by the treaty to be transferred to other U.S. Government agencies or to Panama.

Relying upon this construction, the Company has developed some very rough estimates of the toll increase that will be required effective October 1, 1979, in order to recover the increased costs of operating the Canal after that date. (The agency is in the process of refining these cost estimates and will have more reliable figures available later this month.)

Because of North Slope oil movements through the Canal and a healthy growth in other segments of traffic, the Canal is presently experiencing a much higher level of traffic and tolls than previously forecast. Except for some possible diminution in North Slope oil movements, this high level of traffic is expected to continue at least through 1982 and the following estimates reflect that outlook. Based upon the foregoing, it is estimated that under the Administration's bill, a toll rate increase of approximately 14% would be required. Under H.R. 111, which includes in the toll base provision for interest, amortization of the investment and early retirement costs, an increase of about 35% would be required. While we are fairly optimistic that rate increases of these magnitudes will prove to be adequate for the near term, we are unable

*/ The portion of H.R. 111 dealing with tolls is incorrectly designated (in line 15 on page 70) as Chapter 11; the correct designation would be Chapter 10.

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to predict what the situation will be over the long term. We recognize that it is only a matter of time before we lose North Slope oil altogether. If this loss were to occur in this initial period, the rate increase contemplated by H.R. 1716 would be approximately 22%, while under H.R. 111 it would be about 46%.

It also should be noted that these estimates do not take traffic sensitivity into account. To the extent that these increases would result in a diversion of traffic, still greater increases would be required to cover revenue losses attributable to the diversion. In that regard, the Company is in the process of completing a new study on the sensitivity of traffic to tolls increases, the results of which should be available later this month. The tentative findings of this study are that a tolls increase up to 25% would not have a significant impact on traffic. Increases from 26% to 40%, however, would have a slight impact on traffic, and would require some adjustment in tolls to cover revenue losses attributable to traffic diversions. These conclusions are generally consistent with and confirm findings reached in a previous study completed in January 1978. While the current study has not addressed increases above 40%, based upon those earlier conclusions it appears likely that toll hikes in excess of that figure would trigger progressively greater diversions in traffic.

Of course, the determination of whether the costs of the early retirement program, and of interest on, and amortization of, the investment of the United States in the Canal should be included in the tolls base -- as H.R. 111 proposes -- must be based upon national policy considerations. As the operator of the Canal, however, my concern is whether the value of Canal services is such that world shipping will be able and willing to bear these costs. As evidenced by the foregoing tolls estimates, the long-term financial viability of the waterway would be much more uncertain under the tolls formula contained in H.R. 111 than it would be if tolls were set according to the Administration's formula.

Claims

In the area of claims, the Administration's bill (section 208) would continue for the Commission the Company's present amenability to suit. Sec. 201 would establish the agency's residence for venue purposes in the District of Columbia and the Eastern District of Louisiana. In vessel accident claims, section 260 of H.R. 1716 would provide that the Commission could be sued only in the latter jurisdiction.

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Article XVIII of the Agreement in Implementation of Article III of the treaty provides that non-contractual, third-party claims for damages caused by Commission employees in the performance of their official duties will be presented to that agency for settlement, and that the Commission will assure payment of appropriate damages, if any are due. The Administration has interpreted that provision to mean that a showing of negligence on the part of Commission employees is required damages for such claims may be paid. It was necessary to amend the Canal Zone Code which, as noted above, makes the Company a virtual insurer for vessel accidents occurring in the locks. Because the vessel will be under the exclusive control of the Commission's employees while it is in the locks, however, the Administration's amendment, contained in section 260(d) of H.R. 1716, would place the burden of proof on the agency, rather than on the claimant, in the first instance. In other words, the Commission would have to establish its freedom from negligence in order to avoid liability. For non-locks cases, the Administration's bill would continue present law, which has been interpreted to require the claimant affirmatively to establish negligence on the part of agency employees before the claim may be paid.

In both locks and non-locks cases, the Commission could be sued on vessel accident claims in the Eastern District of Louisiana. That jurisdiction was selected because of its relative proximity to the Canal and, more importantly, because of the recognized expertise of its bench in handling admiralty cases.

Sections 271, 291 and 292 of H.R. 111, on the other hand, would change the liability situation back to the way it was between 1940 and 1951. That is, the Commission would not be amenable to suit for non-maritime claims but would have the authority to pay up to \$60,000 on such claims. With regard to ship accidents, the Commission would be suable only for casualties occurring in the locks and would remain a virtual insurer in those cases. In vessel accidents occurring outside the locks, the Commission, although not suable, would be authorized to pay up to \$60,000. Claims in excess of that amount would have to be presented to the Congress for consideration.

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We question whether the figure of \$60,000 has any relevance to present-day repair costs. Based on the consumer price index, materials which cost \$60,000 in 1940 now cost more than \$315,000. According to the index of shipping costs in the United States, shipyard costs for labor and materials were 615.8% higher in August 1978 than they were in 1940.

Our claims experience in recent years seems to confirm these increases. During the period from FY 1974 to 1978, the Company paid more than \$60,000 on each of 17 claims arising from vessel accidents occurring outside the locks. Thirteen of these payments were over \$100,000, of which seven were over \$200,000, two were over \$300,000 and one amounted to almost \$2 million. Even more striking are the non-locks claims which arose during that same period but which have not yet been settled. Forty-one such claims, totalling more than \$15 million, remain to be disposed of. Twenty-eight of those claimants are seeking more -- many considerably more -- than \$60,000. Finally, during FY 1977 and 1978, there were a total of 46 vessel accidents occurring outside the locks for which the Company has not yet been presented with claims. We have budgeted a total of about \$5,300,000 for these potential claims. That figure includes estimates of over \$60,000 for 15 of these accidents.

In any event, it is important to realize that it is world shipping, and not the United States, which bears the cost of ship accidents occurring at the Canal, since reserves to cover vessel damage claims against the agency are included in the tolls base. In view of that circumstance, and because the present system has worked satisfactorily over the last 27 years, a return to the pre-1951 scheme of liability would seem to be unwarranted.

Miscellaneous Provisions

Section 148 of H.R. 111 states that, for the purposes of determining benefits related to basic compensation, the basic compensation of each employee who is a citizen of the United States shall include the rate of basic compensation established for his position plus the amount of any increase in basic compensation or allowance resulting from wage base changes, across-the-board increases, or recruitment and retention remuneration. The Administration's bill [Sec. 306(b)] makes no distinction with respect to citizenship in this computation of basic compensation. It could be argued that the H.R. 111 provision on this point is in violation of the treaty with regard to wages and fringe benefits since it appears to discriminate on the basis of nationality.

Honorable John M. Murphy

Section 149 of H.R. 111 states that the Panama Canal Employment System shall provide for appropriate interchange between the Panama Canal Employment System and the competitive service. It makes no distinction as to citizenship. Section 307 of the Administration's bill limits the interchange to "citizens of the United States employed by the Government of the United States." The latter represents a continuation of the present system and is the preferred route to take.

Section 212 of the Administration's bill and section 240(c) of H.R. 111 address interagency reimbursement from appropriations for health care. So far as these reimbursements are concerned the bills appear to be similar and adequate. The Administration's bill, however, goes further by authorizing the use of appropriations or funds to defray costs of health care services to elderly or disabled persons who were eligible to receive such services prior to the effective date. We believe this last provision is important to assure the continued health care of disability relief recipients, their widows, Civil Service Annuitants who retired prior to 1970, and those elderly patients remaining at the Canal Zone Mental Health Center pending transfer to facilities in the Republic of Panama.

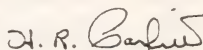
For all the reasons stated above, the Canal Zone Government and the Panama Canal Company favor those provisions of H.R. 1716, over those contained in H.R. 111, dealing with the organization and oversight and financial framework to be established for the new Panama Canal Commission as well as those concerning the liability of that agency for the payment of claims. As noted earlier, we perceive no significant differences between the provisions of the two bills dealing with employee rights and benefits and, accordingly, would support either version.

In your letters requesting this report, you ask that we include estimates of the costs which would be incurred in carrying out the provisions of the two bills. Advance copies of these estimates were forwarded to your staff earlier this week, and are submitted herewith for the record.

Honorable John M. Murphy

The Office of Management and Budget has advised that it has no objection to the submission of this report.

Sincerely yours ,

A handwritten signature in dark ink, appearing to read "H. R. Parfitt", written in a cursive style.

H. R. Parfitt
Governor of the Canal Zone
President, Panama Canal Company

PANAMA CANAL COMMISSION
ESTIMATED APPROPRIATION REQUIREMENTS AND ESTIMATED PAYMENTS TO TREASURY
UNDER H.R. 111

	1980	1981 (in thousands of dollars)	1982	1983	1984
APPROPRIATION REQUIREMENTS					
Operations					
Operating expenses (net of capital acquisition factor) (See Note 3)-----	257,463	270,650	285,508	294,539	312,211
Payments to Panama:					
Fixed annuity-----	10,000	10,000	10,000	10,000	10,000
Public services-----	10,000	10,000	10,000	10,000	10,000
30¢ per Panama Canal net ton transiting-----	54,930	57,120	58,890	62,000	64,000
Total accrued costs-----	332,393	347,770	364,398	376,539	396,211
Less: Depreciation-----	-18,834	-19,201	-19,372	-19,400	-19,400
Total operating obligations-----	313,558	328,569	345,026	357,139	376,811
Capital					
Capital program obligations-----	23,000	24,000	26,000	28,000	29,000
Total operating & capital obligations resulting from current operations-----	336,558	352,569	371,026	385,139	405,811
Requirements to fund outstanding obligations and commitments of predecessor agencies (See Note 1)					
Panama Canal Company:					
Accounts payable & accrued liabilities, incl. leave to be paid terminating employees, less liabilities not requiring funding (see Note 2)-----	47,701	-	-	-	-
Unpaid purchase orders and contracts:					
Related to operations-----	12,933	-	-	-	-
Related to capital projects-----	9,967	-	-	-	-
Commitments for completion of capital projects-----	8,592	-	-	-	-
Canal Zone Government:					
Accounts payable and accrued liabilities-----	5,064	-	-	-	-
Unpaid purchase orders & contracts:					
Related to operations-----	264	-	-	-	-
Related to capital projects-----	326	-	-	-	-
Total requirement re predecessor agencies-----	84,847	-	-	-	-
Total appropriations requirements (See Note 4)	421,406	352,569	371,026	385,139	405,811

HJR 111 (cont'd)

PAYMENTS TO TREASURY

	<u>1980</u>	<u>1981</u>	<u>1982</u>	<u>1983</u>	<u>1984</u>
Tolls and other income to include:					
Accrued costs as stated in operations section-----	332,393	347,770	364,398	376,539	396,211
Early retirement costs-----	332,393	347,770	364,398	376,539	396,211
Amortization on net direct investment-----	15,700	15,700	15,700	15,700	15,700
Interest on unamortized investment-----	15,748	15,748	15,748	15,748	15,748
Capital acquisition factor included in	25,289	24,040	22,792	21,543	20,294
tolls base (See Note 5)	4,166	4,799	6,628	8,600	9,606
Total income paid to Treasury-----	<u>393,296</u>	<u>408,057</u>	<u>425,266</u>	<u>438,130</u>	<u>457,553</u>
Unexpended cash balances from predecessor agencies:					
Panama Canal Company-----	76,016	-	-	-	-
Canal Zone Government:					
Operating expense appropriation-----	5,328	-	-	-	-
Capital appropriation-----	326	-	-	-	-
Total unexpended balances to Treasury	<u>81,670</u>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total payments to Treasury	<u>474,966</u>	<u>408,057</u>	<u>425,266</u>	<u>438,130</u>	<u>457,553</u>

Note 1: Assumes all unexpended but obligated cash balances will be returned to U.S. Treasury, necessitating an immediate appropriation to fund those outstanding obligations.

Note 2: Total payables and accrued liabilities----- 73,577

Less liabilities not requiring funding:

Leave liability, 9-30-80----- 22,873

Repatriation liability----- 1,525

Payments to former employees and widows----- 25,876

47,701

Note 3: Operating expense estimate in 1982 includes \$2,500 thousand for repatriation and commuted leave of police and judicial employees terminated at end of transition period. This was an accrued cost of prior period and is not included in base for revenues for that year. Operating expense estimates for 1983 and 1984 were escalated at 6% per year over 1982 base, as adjusted for discontinuance of courts and law enforcement activities.

Note 4: In addition to the amounts shown for appropriation in 1980, there is also a requirement created by Sec. 241 of H.R. 111 to appropriate monies to liquidate outstanding postal money orders.

Note 5: Our reading of H.R. 111 indicates that there is to be included in the tolls base depreciation on existing plant assets, the full amount of the appropriation received to cover new plant acquisitions, and amortization of the investment. This treatment is not reflected in the above estimates since it would result in shipping being required to pay more than twice the amount of the investment of the U.S.. We have included in the toll base depreciation plus an increment, the sum of which would produce an amount equivalent to the total capital requirement.

Office of Financial Vice President

Panama Canal Company

March 1979

PANAMA CANAL COMMISSION
ESTIMATED REVENUES AND EXPENSES
UNDER H.R. 1716

OBLIGATIONS

	1980	1981 (in thousands of dollars)	1982 (in thousands of dollars)	1983 (in thousands of dollars)	1984
<u>Operations</u>					
Operating expenses (net of capital acquisition factor) (See Note 1)-----	257,463	270,650	283,008	294,539	312,211
Payments to Panama:					
Fixed annuity-----	10,000	10,000	10,000	10,000	10,000
Public services-----	10,000	10,000	10,000	10,000	10,000
30¢ per Panama Canal net ton transited-----	54,930	57,120	58,890	62,000	64,000
Total accrued costs-----	332,393	347,770	361,898	376,539	396,211
Less: Depreciation-----	-18,834	-19,201	-19,372	-19,400	-19,400
Total operating obligations-----	313,559	328,569	342,526	357,139	376,810
<u>Capital</u>					
Capital program obligations-----	23,000	24,000	26,000	28,000	29,000
Total operating & capital obligations resulting from current operations-----	336,559	352,569	368,526	385,139	405,810

REVENUES

Tolls and other income to include:					
Accrued costs as stated in operations section-----	332,393	347,770	361,898	376,539	396,211
Capital acquisition factor included in tolls base-----	4,166	4,799	6,628	8,600	9,600
Total revenues-----	336,559	352,569	368,526	385,139	405,811

Note 1: Operating expense estimates for 1983 and 1984 were escalated at 6% per year over 1982 base, as adjusted for discontinuance of courts and law enforcement activities.

Office of Financial Vice President
Panama Canal Company
March 1979



LAW DEPARTMENT

Washington, DC 20260

February 13, 1979

Honorable John M. Murphy
 Chairman, Committee on
 Merchant Marine and Fisheries
 House of Representatives
 Washington, D.C. 20515

Dear Mr. Chairman:

This responds to your request for the views of the United States Postal Service on H.R. 111, H.R. 454, and H.R. 1716, all of which are bills to implement the Panama Canal Treaties of 1977.

Section 341 of H.R. 454 and section 341 of H.R. 1716 concerning postal matters are identical and the United States Postal Service has no objection to the enactment of the section. The provisions of that section were agreed to by the Postal Service in discussions with the State Department and the Defense Department. Sections 241 through 244 of H.R. 111 also deal with postal matters but are incomplete. The provisions of section 341 of the other two bills should be adopted in lieu of the postal provisions of H.R. 111.

In addition, your attention is invited to the title of H.R. 454 which inaccurately describes the postal provisions of the proposed legislation. The statement in the title that H.R. 454 provides for "... the assumption by the United States Postal Service of the functions of the Canal Zone Postal Service ..." is in error. In general, as we understand it, the effect of the ratification of the treaties and the accompanying legislation will be to discontinue the Canal Zone Postal Service, transfer to Panama jurisdiction over postal matters in areas of the Canal Zone which will be returned to Panama, and provide for the operation of United States military post offices in those areas over which the United States will retain certain jurisdiction. The United States Postal Service will have no responsibility to operate post offices or to provide any other postal services in the area. We will, of course, exchange mail with the U.S. military post offices and with the Republic of Panama.

Sincerely,

W. Allen Sanders
 Acting Deputy General Counsel



SMITHSONIAN INSTITUTION

Washington, D.C. 20560
U.S.A.

February 16, 1979

FILE COPY
DO NOT REMOVE
COMMITTEE ON MERCHANT
MARINE AND FISHERIES

Honorable John M. Murphy
Chairman
Committee on Merchant Marine
and Fisheries
U. S. House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

Thank you for referring to the Smithsonian Institution for comment H.R.111, H.R.454, H.R.1511, and H.R.1716, legislative proposals related to implementation of the Panama Canal Treaty of 1977.

We defer to the views of Government departments and agencies on most aspects of these measures, limiting our comments to employment considerations and environmental concerns.

The Smithsonian Institution's extensive tropical research activities are conducted by scholars employed at the Smithsonian Tropical Research Institute (STRI) in Panama. In addition to U.S. citizen employees, the staff also includes citizens of Panama and of many other countries, a factor which occasionally generates unique employment concerns. Moreover, since the Smithsonian Tropical Research Institute's activities are expected to continue indefinitely, and since the living and working conditions of our employees will be changing as the United States presence decreases, we are seeking an employment program which can accommodate these and similar concerns.

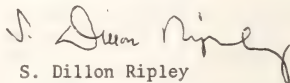
We believe that the provisions of Title I of H.R.111, and of Title III of H.R.454 and H.R.1716 which are available to the Smithsonian Institution will provide the flexibility necessary to meet our needs.

We also believe that the sections of those titles authorizing recruitment and retention remuneration may be of importance to us in future years.

With respect to environmental matters we would point out that section 101 of Title I of both H.R.454 and H.R.1716 direct the President to appoint the representatives of the United States to the Joint Commission on the Environment in conformance with Treaty requirements. As a technical matter we believe that the word "may" in the first sentence of Section 106(a) of Title I of H.R.111 should be amended to "shall" to conform as well. We also believe that language, such as that contained in H.R.454 and H.R.1716, referring to a possible sea-level canal study, should be incorporated into H.R.111.

The Office of Management and Budget advises that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "S. Dillon Ripley", written in a cursive style.

S. Dillon Ripley
Secretary



DEPARTMENT OF STATE

Washington, D. C. 20520

APR 5 1979

Dear Mr. Chairman:

The Secretary has asked me to thank you for your letter dated March 5 requesting comments on H.R. 2522, a bill concerning the implementation of the Panama Canal Treaties.

Under the Panama Canal Treaties approved by the Senate last April, the United States will retain operational control of the Canal and primary responsibility for its defense until the end of this century, with Panamanian participation. Most of the commercial activities currently performed by the Panama Canal Company, as well as most governmental functions in what is now the Canal Zone, will be assumed by Panama. Also, Panama will become responsible for the operation of the ports of Balboa and Cristobal, and the transisthmian railroad.

This major transfer and realignment of responsibilities, which will occur on October 1 of this year, cannot be successfully accomplished without extensive planning closely coordinated by the United States and the Republic of Panama. Such planning activities formally commenced last year, and a schedule for the accomplishment of actions necessary for treaty implementation is now being completed.

H.R. 2522 seeks to require termination of these planning efforts; such a turn of events would effectively preclude the possibility of entering into the Treaty period in a posture approaching preparedness. The serious disruption of Canal operations, which most certainly would result from a cessation of implementation planning, would not be in the interest of either the United States or Panama and would be highly detrimental to world shipping.

The Honorable

John M. Murphy, Chairman,

Committee on Merchant Marine and Fisheries,
House of Representatives.

With regard to the bill's prohibition against transferring property to Panama pursuant to the new treaty without express statutory authorization, it should be noted that the Senate, in approving the pact, rejected on constitutional grounds an amendment requiring an act by both houses of Congress prior to the transfer of such property. The United States Court of appeals for the D.C. Circuit expressly held in Edwards vs Carter that the Senate could transfer property of the United States by self-executing Treaty. The approval of the House is thus unnecessary.

The provision of H.R. 2522 which seeks to continue the present Canal agencies, and to prohibit them from ceasing operations with respect to the waterway and the Zone, except as otherwise provided in an act of Congress, appears to be partially unnecessary and partially anomalous. Although, under the self-executing provisions of paragraph 10 of Article III of the new treaty, the Panama Canal Company and Canal Zone Government will cease operations "within the territory of the Republic of Panama which formerly constituted the Canal Zone," those agencies will continue to exist until such time as they are disestablished by amendment of the Canal Zone Code. Accordingly, that portion of H.R. 2522 which would provide for their continued existence until such time as Congress eliminates them appears unnecessary.

The bill's requirement that the Panama Canal Company and the Canal Zone Government continue to operate the Canal and the Zone until Congress otherwise provides conflicts with paragraph 10 of Article III of the treaty, which requires that they cease operations within the former Canal Zone. The Canal Zone will be disestablished on October 1, 1979 by virtue of the termination of the 1903 treaty between Panama and the United States. The right of the United States to exercise jurisdiction over the Zone will terminate. The requirement of H.R. 2522 that the present Canal agencies continue operations with respect to the Canal Zone after entry into force of the 1977 Treaty attempts to force officials of the United States to continue functions which the United States has no right under international

law to discharge. This is particularly irresponsible in view of the attempt to impose criminal penalties for violations of the resolution.

I hope that the foregoing comments will be helpful to the Committee in its deliberations.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report.

Sincerely,

Douglas J. Bennet, Jr.
Assistant Secretary for
Congressional Relations



OFFICE OF THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

APR 23 1979

Honorable John M. Murphy
Chairman, Committee on Merchant
Marine and Fisheries
House of Representatives
Washington, D. C. 20515

Dear Mr. Chairman:

This is in response to your request for our comments on H.R. 111, a bill

"To provide for the operation and maintenance of the Panama Canal and to provide for the exercise of the duties of the United States provided in the Panama Canal Treaty of 1977,"

and H.R. 1716, a bill

"To implement the Panama Canal Treaty of 1977 and related agreements and for other purposes."

The purpose of the bills is to provide legislation necessary to or desirable for the implementation of Panama Canal Treaty of 1977 between the United States of America and the Republic of Panama, signed September 7, 1977.

The Department of Transportation supports the adoption of H.R. 1716 for purposes of implementing the Panama Canal Treaty and related agreements. The proposed legislation provides for the flexibility and continuity needed for carrying out the spirit of the treaty while serving the domestic transportation interests of the United States.

The following are specific comments on the proposed legislation which supplement the more general statement presented by Mr. Stephen A. Shefler, Deputy Assistant Secretary for Policy and International Affairs, on February 15, 1979.

- Section 2 of H.R. 111 refers to the Panama Canal Treaty of 1977 signed on September 7, 1977, "and the agreements relating to that treaty signed on the same date (hereinafter in this Act referred to as the 'related agreements')". DOT proposes that Section 2 be changed to read as the Administration's proposal in H.R. 1716 does:

"As used in this Act, references to the Panama Canal Treaty of 1977 and related agreements mean the Panama Canal Treaty between the United States of America and the Republic of Panama signed September 7, 1977, the agreements relating to and implementing that Treaty signed on the same date, and any agreement concluded pursuant to the Exchange of Notes relating to Air Traffic Control Services signed September 7, 1977."

This change is necessary to expand the current definition and coverage to assure certain benefits for FAA employees. In accordance with an exchange of notes relating to Air Traffic Control Services on September 7, 1977, the U. S. and Panama negotiated an arrangement for the continuation by FAA and eventual assumption by Panama of this service. The agreement was signed on January 8, 1979, and provided for the discontinuance of FAA operations in five years. Some FAA employees who will be affected are U. S. citizens who do not have return rights to FAA positions in the U. S. Other affected FAA employees are not U. S. citizens.

- Section 203 of H.R. 111 provides placement assistance to U. S. citizens employed in the Canal Zone other than the Panama Canal Company or the Canal Zone Government, whose positions are eliminated as the result of the implementation of the Panama Canal Treaty of 1977. It appears that FAA employees are excluded from (b) (2) of this section. DOT suggests that the words "and related agreements" be added after the phrase "as the result of implementing the Panama Canal Treaty of 1977." Also, the obligation of all agencies to place separated employees should be clarified.
- Section 205 of H.R. 111 provides early retirement eligibility for an employee of the Panama Canal Commission or other Executive agency who is involuntarily separated as a result of the implementation of the Panama Canal Treaty of 1977. It appears that FAA employees are also excluded from (b) (2) in subsection (i) (1) and the words "and related agreements" should again be added.
- Section 225 of H.R. 111, labor-management relations, exempts Government employees in the Canal Zone from provisions of Chapter 71 of Title 5 of the United States Code. Because of this exemption, the Secretary of Defense has been given authority to prescribe regulations incorporating certain provisions of Chapter 71 of Title 5 and providing for collective bargaining

between employees and management officials. DOT sees no need either to exempt our employees from the provisions of Chapter 71 of Title 5 or to provide for their inclusion under these special regulations. DOT employees in the Canal Zone are currently and appropriately provided the benefits of Chapter 71 of Title 5.

- Section 373 and 374 of H.R. 111, concerning transfer of public property, are confusing and could affect the transfer to Panama of FAA property under Section A. 3. of Article VI of the agreement between the United States of America and the Republic of Panama, concerning Air Traffic Control and Related Services which was signed on January 8, 1979. However, we are uncertain whether such disposition would be prohibited or not. Since the proposed transfer provision of the treaty are self-executing, there is no need for these sections. We suggest that they be deleted. In this way, any confusion concerning their possible impact on the referenced agreement will be avoided.

The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Congress.

Sincerely,



Acting ~~Linda Heller Kamm~~
General Counsel

ANALYSIS OF
H.R. 111, PANAMA CANAL ACT OF 1979

December 1978

By

W. Merrill Whitman
Consultant
Committee on Merchant Marine & Fisheries

ANALYSIS OF
PANAMA CANAL ACT OF 1979

A. Background

The purpose of the bill, "Panama Canal Act of 1979," is to provide for the maintenance and operation of the Panama Canal under the two treaties between the United States and the Republic of Panama, signed September 7, 1977, hereinafter referred to respectively as "the Panama Canal Treaty" and "the Neutrality Treaty," and related documents associated with those treaties, including certain agreements between the two Governments also signed on September 7, 1977. The two treaties and related documents have been published by the Department of State in a series of "Selected Documents" (Nos. 6, 6A, 6B and 6C).^{*} A detailed analysis of the two treaties and two major agreements supplementing Articles III and IV of the Panama Canal Treaty is printed at pages 127-141 of the Report by the Senate Foreign Relations Committee on Executive N, 95th Congress (Executive Report No. 95-12). A summary of the provisions of the treaty and supplementary agreements and other material is attached to this analysis for convenient reference (Appendix A).

The Senate Resolution ratifying the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal by a resolution that incorporated two Amendments, two Conditions, four Reservations, and five Understandings (Congressional Record, 3/16/78, pp. S3857-3858). The Resolution of Ratification of the Panama Canal Treaty incorporated six Reservations and six Understandings (Congressional

^{*} Documents 6 and 6B are reproduced in the Hearings on the Committee on Merchant Marine and Fisheries, House of Representatives, "NEW PANAMA CANAL TREATY" August 17, 1977, Serial No. 95-13, pp. 102 et seq.

Record, 4/18/78, pp. S5796-5797). These modifications were incorporated in the Instruments of Ratification exchanged by the United States and Panama on June 16, 1978 (Dept. of State Bulletin, July 1978, pp. 52-57, attached for convenient reference in Appendix C).

The power of the Congress to enact legislation governing the operation of the Panama Canal is not, however, created by the treaty with Panama, but is derived from constitutional provisions vesting in the Congress powers:

1. to regulate commerce with foreign nations and among the several states (Art. I, sec. 8, cl. 3);
2. to enact appropriation laws (Art. I, sec. 9, cl. 7);
3. to dispose of and make all needful rules and regulations respecting the territory or other property belonging to the United States (Art. IV, sec. 3, cl 2).

The relationship of the operation of the Panama Canal to the commerce power has been expressly recognized by the Supreme Court (State of New York, ex rel. Rogers v. Graves, 299 U.S. 401 (1937)). The requirement for enactment of legislation pursuant to the powers of Congress to dispose of U.S. property in the Canal Zone and to appropriate funds for operation of the canal, including the making of payments to Panama contemplated by the treaty, was explored at length in the 95th Congress hearings by the Committee on Merchant Marine and Fisheries (see Hearings, 95th Cong., 2d Sess., "Power of Congress to Dispose of U.S. Property," Serial No. 95-32, and hearings of the Senate Committees on the Judiciary and Foreign Relations).

The Panama Canal Act of 1979 has been drafted at the direction of the Chairman and within the resources of the

Committee on Merchant Marine and Fisheries after consideration of:

1. the treaties, agreements and related documents described above;
2. draft legislation to implement the treaties prepared in the Executive Branch and informally made available to the Members of Congress (Cong. Rec., 4/5/78, pp. 54884, et seq.);
3. provisions of the Canal Zone Code now in effect (76A Stat. 1, et seq.);
4. the provisions of law on which the current provisions of the Canal Zone Code are based, including (a) the Act of September 26, 1950 (64 Stat. 1038); (b) the Panama Railroad Act of June 29, 1948 (62 Stat. 1076); (c) the 1934 edition of the Canal Zone Code (Act of June 19, 1934, not published in the Statutes at Large); and (d) the Panama Canal Act of August 24, 1912 (37 Stat. 560), as amended and supplemented;
5. the provisions of Title 31 of the United States Code governing the financial management of agencies of the U.S. Government and other general laws of the United States relating to the operation of the Panama Canal;
6. enactments relating to the organization and management of various corporate and noncorporate Government agencies whose functions are in some respects comparable to the operation of the Panama Canal, such as TVA, Bonneville Power Administration, U.S. Postal Service.

B. The 1977 Treaty

Under the Panama Canal Treaty the United States will continue to operate the Panama Canal Until December 31, 1999, subject to the provisions of the treaty and applicable laws of the United States; however, the conditions and circumstances under which such operation will continue are substantially modified by the treaty in comparison with those prevailing up

to this time. These changes result from termination of territorial jurisdiction in the Canal Zone; the elimination of the Canal Zone Government and transfer of all governmental functions to Panama except the protection of the canal, to be shared by the two countries; the limitation of the functions to be performed by the U.S. Government agency to be established for operation of the canal (named in the treaty as the "Panama Canal Commission"); and provision for substantial increases in the payments by the United States to the Republic of Panama as well as increasing participation by Panama in the management, protection and defense of the canal.

C. Legislative History

After assimilation of the treaty provisions as they affect the permissible scope of operations of the United States in relation to the Panama Canal, the next step in drafting the legislation to provide for such operations was the examination of the provisions of the Canal Zone Code now in effect, and the legislative history of those provisions. A summary of that history is attached as Appendix B.

1904-1951

The history of the structure of the present Panama Canal organizations summarized in Appendix B shows that from the time of completion to 1951 the Panama Canal was maintained and operated by a Government agency responsible to the President. The responsibilities of that agency were (1) the maintenance and operation of the canal and (2) the Government of the Canal Zone.

Both of these activities were financed by direct appropriations, and tolls for use of the canal were paid into the Treasury as miscellaneous receipts.

During the period 1904-1951 the Panama Railroad, originally a private corporation organized under the laws of the State of New York, was used by the United States as an adjunct to the Isthmian Canal Commission and the agency called the Panama Canal in the construction and operation of the canal. As its name indicated, the primary activity of the Panama Railroad Company at the time of its acquisition by the United States was the operation of a railroad as a common carrier across the Isthmus of Panama. The Company engaged in numerous other activities, however, which were expanded after acquisition of the Company by the United States. Those activities included: the operation of a steamship line between the U.S. and Panama, also a commercial common carrier; extensive transactions in the sale and leasing of real estate owned by the Company in Panama; the operation of retail stores for sales to U.S. civilian and military personnel; the operation of piers and provision of cargo handling and warehousing services at the northern and southern terminals of the Panama Canal and Panama Railroad; sale of bunker fuel and ship stores to ships at the Canal Zone ports; and the operation of commercial hotels.

The scope of these activities was somewhat restricted by the 1936 and 1955 Treaties with the Republic of Panama, but, in general, the function of the Panama Railroad Company was to engage in transactions of a commercial nature, normally provided

by private enterprise for the general public as well as Government agencies and personnel in the Canal Zone.

D. Panama Railroad Act of 1948

In 1948, the Panama Railroad Company was recognized as a wholly-owned Government corporation under the Government Corporation Control Act. Congress enacted a new charter for the corporation (commonly referred to as the Panama Railroad Company Act) and the New York corporation was dissolved. The new federal charter gave the corporation power to carry on its previous activities, and detailed an elaborate arrangement for accounting for the assets of the Company as a basis for payments to the United States of interest on the Government's investment in the Company and, to the extent possible, recovery of that investment from the Company's profits.

Prominent among the powers granted to the Company were those to sue and be sued, to acquire and dispose of property, and to determine the character of and necessity for its expenditures and obligations and the manner in which they were to be incurred, allowed and paid. Under the Government Corporation Control Act the transactions of the Company were subject to audit by the General Accounting Office, but the authority of the Comptroller General over the accounts of the Company is limited to reporting the audit findings to the Congress. On the basis of an annual budget program submitted through the Office of Management and Budget, Congress made the funds of the Company available for expenditure in annual appropriation acts, but the Company's

expenditures for either operating expenses or capital improvements were not limited to the dollar amounts shown in the budget program.

E. 1950 Legislation

In 1950, in anticipation of a proposed increase in rates of tolls of approximately 10 percent (from \$.90 to \$1.00 per ton), the operation of the Panama Canal was regarded as more closely related to the commercial operations of the Panama Railroad Company than to the governmental functions of the agency then known as the Panama Canal, and legislation enacted in that year transferred the responsibility for operation of the canal to the corporation, renamed the Panama Canal Company. The agency formerly known as the Panama Canal was renamed the Canal Zone Government and continued in existence in noncorporate form for the performance of duties associated with the Government of the Canal Zone.

The 1950 legislation generally left intact the powers of the railroad corporation, including those specifically referred to above, and contemplated the merger of the canal operation and certain other business-type activities of the Panama Canal agency into the other activities of the Company, all subject to the same fiscal provisions that had been applicable to the commercial activities of the railroad company.

The 1950 legislation gave the Company power to establish tolls for use of the canal, subject to approval by the President, based on a formula designed to recapture either from tolls or

other revenues all the costs of operation of the canal and related facilities as determined in accordance with the other provisions of the Company's charter.

F. Effect of 1977 Treaties

The 1977 treaties with the Republic of Panama have completely changed the conditions that were regarded as decisive in the 1950 transfer of the responsibility of the canal from the noncorporate to the corporate agency. The governmental functions of the agency that originally was responsible for operation of the canal and government of the Canal Zone disappear, except for some limited purposes during the 30-month transition period following the effective date of the Panama Canal Treaty. The railroad, the piers, and other commercial business activities not previously discontinued under prior treaties will no longer be operated by the U.S. Government. The remaining extensive real estate holdings of the Panama Railroad Company, as well as of the United States on the Isthmus of Panama, are to be transferred to the Republic of Panama. In short, the underlying commercial operations of the corporation, that formed the basis for the statutory plan for financial management of the corporation have been removed.

In addition, the cost of operation of the canal has been dramatically increased by treaty provisions for payments to Panama aggregating from \$70 million to \$80 million per year (depending in part on the amount of traffic through the canal and the net revenues realized from the operation).

All these changes require careful examination of the question whether the charter of the Panama Canal Company is appropriate as the basis for the ground rules to be made applicable by Congress to the operation of the canal under the conditions established by the 1977 Treaty. The legislation prepared in the Executive Branch assumes an affirmative answer to that question and in effect continues the Panama Canal Company with selected changes in various provisions in the laws now applicable to the Company found in Title 2 of the Canal Zone Code.

G. Effect of H.R. 111

The bill prepared in the Committee would repeal Title 2 of the Canal Zone Code and return to the noncorporate structure under which the canal was operated prior to 1951. H.R. 111 follows the organization of Title 2 of the Canal Zone Code, preserving existing section numbers as far as possible, in part because the provisions of that title governed the noncorporate agency that operated the canal prior to 1950, and in part because that form makes possible a direct comparison between the provisions of existing law with those of the Executive Branch bill and of H.R. 111. The bill prepared in the Committee consolidates all the organizational provisions in one Act.

H. Summary

As indicated by the preceding discussion, the principal distinguishing features of the Committee bill, H.R. 111, are:

1. the provision for operation of the canal by a noncorporate agency instead of continuing the Panama Canal Company under another name;
2. the return to the requirement that revenues of the canal be paid into the Treasury and that expenditures be made pursuant to annual appropriations;
3. the centralization of administrative authority and responsibility in the Secretary of Defense; and
4. provision for Presidential appointment and Senate confirmation of the key officials of the agency and members of the various policy-making bodies provided for by the treaty, such as the supervisory board, the consultative committee and the committee on the environment.

The provisions for a noncorporate agency subject to the financial controls applicable to the Government agencies has several subsidiary effects of importance in maintaining close Congressional oversight over the canal operations, a matter that will assume increasing importance with the passage of time. Under the bill, the accounts of the Panama Canal Company are to be established in accordance with the policies and procedures prescribed by the Comptroller General to reflect all costs of operation of the canal and related facilities.

This arrangement makes possible the elimination of fiscal provisions now included in Title 2 of the Canal Zone Code which were devised for the special financial structure of the Panama Railroad Company and which are unnecessary and inappropriate under the arrangement generally applicable to noncorporate agencies that pay their revenues into the Treasury and make expenditures authorized by appropriations. This arrangement

also makes irrelevant the issue whether the agency should be required to pay into the Treasury interest on the Government's investment and amounts necessary to amortize that investment, inasmuch as all revenues of the canal are paid into the Treasury and expenditures are made from appropriations after regular Congressional scrutiny. This point assumes special importance in view of the probability that tolls for use of the canal cannot be increased to cover all costs of operation of the canal over the period of U.S. control provided by the treaty.

The feasibility of operation of the canal with the organizational features incorporated in H.R. 111 has been demonstrated by the successful operation of the canal under that arrangement for the 37-year period from completion of the canal until 1951.

The section-by-section analysis attached as Appendix D shows the source of the various provisions and indicates their relationship to the organization provisions of Title 2 of the Canal Zone Code before and after the 1950 amendments, as well as those of H.R. 1716 prepared in the Executive Branch.

Appendix A

SUMMARY OF PANAMA CANAL TREATY OF 1977
AND RELATED AGREEMENTS

Article I of the Treaty abrogates prior treaties between the United States and Panama, including the 1903 Treaty under which the United States was granted the zone of land now identified as the Canal Zone and all the rights, power and authority within the Canal Zone which the United States would possess if it were the sovereign of the territory.¹ As a result, Panama resumes the exercise of the powers of sovereignty over the Canal Zone, to the exclusion of the exercise of such powers by the United States, and the Canal Zone is eliminated as a geographic area. In Article I, Panama grants to the United States the rights necessary to regulate the transit of ships through the canal and to "manage, operate, maintain, improve, protect and defend the Canal (par. 2). Article I also provides that Panama shall participate increasingly in the management, protection and defense of the canal (par. 3).

Article II provides for ratification of the Treaty, its entry into force and its termination at noon, December 31, 1999.

Article III includes provisions that:

- Panama grants to the United States the rights to operate and maintain the canal and provide for orderly transit of vessels through the canal (par. 1).

¹A list of the treaties and agreements abrogated by Article I is set out in the Agreed Minute published in Department of State, Selected Documents, No. 6A, p. 13.

- In carrying out its responsibilities the United States may (par 2):

- (a) use installations, areas and waters described in an "Agreement in Implementation of this Article?"¹
- (b) make appropriate improvements and alterations to the installations and areas referred to in (a).
- (c) make and enforce navigation rules for the canal.
- (d) establish, modify, collect and retain tolls for the use of the canal, and other charges, and establish and modify methods of their assessment.
- (e) regulate relations with U.S. Government employees.
- (f) provide supporting services to facilitate performance of its responsibilities.
- (g) make and enforce regulations for the effective exercise of the rights and responsibilities of the United States under the Treaty.
- (h) exercise any other right under the Treaty or otherwise agreed upon between the parties.

- The United States "shall, in accordance with the terms of this treaty and the provisions of United States law, carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission, which shall be constituted by and in conformity with the laws of the United States of America." (sec. 3)
- The Panama Canal Commission is to be supervised by a nine-member board, the membership of which is to be comprised of five nationals of the United States and

¹The Agreement in Implementation of Article III is published in the State Department's "Selected Documents" series 6B, reproduced in the Hearings of the Merchant Marine and Fisheries Committee on Aug. 17, 1977, Serial No. 95-13, beginning at p. 121.

four nationals of Panama. (sec. 3a)

- A Panama Canal Consultative Committee, composed of an equal number of "high-level" representatives of the United States and Panama is to be established by the two countries to advise each on matters of policy affecting the canal's operation, such as tolls, employment and "international" policies. The Committee may establish subcommittees. (sec. 7)¹
- The United States is to employ a national of the United States as Administrator of the Commission and a Panamanian national as Deputy Administrator through December 1989. After that date the Administrator is to be a Panamanian and the Deputy Administrator a United States national. (sec. 3c)
- "the Panama Canal Commission shall reimburse the Republic of Panama" in the amount of \$10 million per annum for certain described services in canal operating areas and housing areas presently provided in the Canal Zone by the Panama Canal Company and Canal Zone Government. Provision is made for adjustment of the amount of the payment in three years for inflation and "other relevant factors affecting the cost of such services." (par. 5)
- Panama will provide, in the area now comprising the Canal Zone, customs and immigration service, postal service, courts, and licensing. (par. 6)
- Panamanian nationals will participate on a progressively growing basis at all levels of employment in the Commission with the objective of preparing for assumption of full responsibility for operation of the canal on termination of the treaty. (par. 8)
- An Agreement in Implementation of Article III, comprised of 21 Articles, 3 Annexes, an Agreed Minute and a Map Atlas is to govern the use of the areas, waters and installations with respect to which the United States is granted rights under Article III, and the rights and legal status of U.S. Government agencies and employees operating in Panama pursuant to Article III. (par. 9)

Under Article IV of the Treaty:

- The United States has primary responsibility for the protection and defense of the canal, although both the U.S. and Panama are committed to meet threats to the security of the canal. The rights of the U.S. to station, train and move military forces is governed by an Agreement in Implementation of Article IV. (Selected Documents, Dept. of State, No. 6B, at page 28.)
- The United States and Panama are to establish a Combined Board comprised of an equal number of senior military representatives of each party, to consult, cooperate and advise the two governments on all matters pertaining to the protection and defense of the canal.

Article V of the Treaty requires that employees of the Commission and its contactors abstain from political activity or intervention in the internal affairs of Panama.

Article VI of the Treaty requires implementation of the Treaty in a manner consistent with the protection of the environment and provides for a joint commission in the protection of the environment.

Article VII of the Treaty puts the canal areas under the flag of Panama, but authorizes the display of the U.S. flag at the headquarters of the Commission and at the site of the Combined Board set up pursuant to Article IV and at such other places and on such occasions as agreed by the two countries.

Article VIII grants immunity from Panamanian jurisdiction to U.S. Government agencies operating in Panama under the Treaty. In addition, not more than 20 officials of the Panama Canal Commission and their dependents may be designated by the United States to enjoy privileges and immunities accorded to diplomatic agents and their dependents under international law.

Article IX of the Treaty, headed "Applicable Laws and Law Enforcement," provides:

Par. 1: The law of Panama shall apply in the areas made available for use of the United States, although as to matters that occurred before the treaty, Panamanian law is to be applied only to the extent specified in prior treaties and agreements.

Pars. 2-7, relate to the rights of persons engaged in business or nonprofit activities in the Canal Zone at the time of ratification of the treaty. In general, these sections provide for continued use of the locations in use at the time of the ratification of the treaty on the same terms as previously with provision for compensation if such persons are required to discontinue their activities or vacate their property.¹

Par. 8, provides that Panama will not take action that would interfere with the exercise of any right granted to the United States by the treaty.

Par. 9, exempts vessels transiting the canal and cargo passengers and crews carried on transiting ships from any Panamanian tax or charges unless such ships call at a Panamanian port or unless passengers or crew disembark in Panama, in which case the ship or disembarking passengers or crew may be subject to charges applicable generally in such circumstances.

¹See also paragraph 1 of the Annex to the Treaty, Department of State, Selected Documents, No. 6A, p. 11.

Par. 10, provides that the United States and Panama will cooperate to take the steps necessary to guarantee the security of the Panama Canal Commission and other U.S. agencies operating in Panama, their contractors, employees and dependents.

Par. 11, provides for a future agreement whereby nationals of either State who are sentenced by the courts of the other State, and are not domiciled therein may serve their sentences in their State of nationality.

Article X provides, in paragraph 1, that the United States shall establish employment regulations providing terms, conditions and perquisite for all employees of the Panama Canal Commission. The regulations are required to be provided to Panama prior to their entry into force.

Par. 2 provides for preference in hiring for Panamanian applicants and that the United States will "endeavor" to observe Panamanian law in respect to the proportionate number of Panamanians required to be employed by foreign business enterprises in Panama.

Par. 3 limits recruitment of personnel for the Panama Canal Commission outside of Panama to persons possessing skills and qualifications which are not available in Panama. The paragraph also provides for:

- training programs for Panamanians to be established by the United States (b);
- reduction of the number of U.S. employees within five years to not more than 80% of the number prior to the treaty (c);

- exchange of information between the U.S. and Panama as to the availability of positions and of qualified applicants (d)

Par. 4 provides that the U.S. will establish employment standards for employment by the Panama Canal Commission, recognizing professional licenses issued by Panama in respect to positions requiring professional licenses.

Par. 5 requires rotation of new U.S. employees at least every five years, with provision for exceptions in appropriate cases.

Par. 6 provides for non-discrimination with regard to wages and fringe benefits, but authorizes additional pay for U.S. nationals employed before the treaty or any person recruited outside of the Republic of Panama.

Par. 7 provides for job protection for employees of the Panama Canal Company or Canal Zone Government who lose their jobs as a result of discontinuance of activities by the U.S. pursuant to the treaty. Panama agrees to continue such employees in their old jobs in activities transferred to Panama "to the maximum extent feasible" and to keep their conditions of employment no less favorable than before. The U.S. agrees to place persons who are displaced in other U.S. jobs "to the maximum extent feasible."

Par. 8 provides that the Panama Canal Commission may lend employees to Panama, on a reimbursable basis, to work in activities transferred to Panama under the treaty.

Par. 9 recognizes the right of collective bargaining for employees of the Panama Canal Commission.

Par. 10 provides that the United States will provide an appropriate early retirement system for employees of the Panama Canal Company and Canal Zone Government who were employed immediately before the entry into force of the treaty.

Article XI "Provisions for the Transition Period." As noted above, Article I of the treaty terminating and superseding the 1903 treaty, ends the jurisdiction of the United States over the Canal Zone and restores Panama to the position it occupied before the 1903 treaty was concluded, i.e. it resumes the exercise of the powers of sovereignty granted to the United States in Article III of the superseded 1903 treaty. Article IX of the treaty covers the application of Panamanian law in the area heretofore included in the Canal Zone, and Article XI returns to the subject of transition from U.S. jurisdiction to Panamanian jurisdiction.

Article XI establishes a 30-month transition period, beginning on the effective date of the treaty, during which:

- Panamanian and U.S. laws will apply concurrently in "certain of the areas and installations made available to the United States pursuant to the treaty (par. 2)
- the U.S. will exercise primary criminal jurisdiction over U.S. citizens employed by the Panama Canal Commission or connected with the Armed Forces and civilian component, and their dependents (par. 2a) for offenses committed in the transition period within the covered areas, or previously committed in the Canal Zone

- Panama will exercise primary jurisdiction in all other cases "except as otherwise provided in this Treaty and related agreements or as may be otherwise agreed" (par 2a)¹
- either party may waive its primary jurisdiction (par 2b)
- the U.S. retains jurisdiction over criminal cases relating to offenses committed prior to the treaty in violation of laws applicable in the Canal Zone (par 3)
- the U.S. retains police authority for the transition period in the covered areas and installations (par 4)
- persons arrested not subject to the primary jurisdiction of the U.S. are to be turned over to the Panamanian police (par 4)
- joint police patrols will be established by the U.S. and Panama, and arrests effected by the joint patrol will be the responsibility of the country having primary jurisdiction (par 4)
- U.S. courts now functioning in the Canal Zone will continue to function during the transition period for purposes of the jurisdiction to be exercised under Article XI. (par. 5) Jurisdiction of the U.S. courts over civil cases is limited to cases pending when the treaty enters into force (par. 6). During the transition period laws, regulations and administrative authority applicable in the Canal Zone before the entry into force of the treaty continue generally for the purpose of law enforcement and judicial jurisdiction by the United States which may amend, repeal or otherwise change such laws. (par. 7)
- Panama and the United States are to consult concerning procedural and substantive matters relative to the implementation of Article XI, including the disposition of cases pending at

¹Procedural guarantees for trials under Panamanian law of U.S. citizen employees or dependents are specified in Annex C of the Agreement in Implementation of Article III. See Department of State, Selected Documents, No. 6B, p. 24.

the end of the transition period, as to which they may enter into agreements by exchange of notes or other instrument (par. 7).

- During the transition period the United States may continue to incarcerate individuals in the areas made available for use by the United States, or may transfer such individuals to penal facilities in the United States (par. 8).

Article XII "A Sea-Level Canal or a Third Lane of Locks."

The United States and Panama "commit themselves" to study jointly the feasibility of a sea-level canal in Panama, and if "they" determine that a sea-level canal is necessary, they are to negotiate terms for its construction (par. 1).

For the duration of the treaty Panama agrees not to construct a sea-level canal except in accordance with its terms, and the U.S. agrees not to negotiate with other countries for construction of a sea-level canal on any other route, except as the two parties may otherwise agree (par. 2).

The U.S. may add a third lane of locks to the existing canal at any time during the duration of the treaty, after delivery of plans for such construction to Panama. Areas in addition to those, the use of which is granted by the treaty, may be used for the third locks, subject to agreement of the parties, and the terms of the treaty will apply to such additional areas (par. 4).

Use of nuclear excavation techniques without the consent of Panama is prohibited (par. 5).

Article XIII "Property Transfer and Economic Participation by the Republic of Panama."

Property transfers.

On termination of the treaty Panama assumes "total responsibility" for operation of the canal which is to be turned over to Panama "in operating condition and free of liens and debts, except as the two parties may agree." (par. 1)

The United States transfers to Panama all right, title and interest in all real property, including non-removable improvements in the Canal Zone on the following schedule:

1. On entry into force of the treaty (par. 2):
 - (a) the Panama Railroad (par. 2a); and
 - (b) property outside the areas the use of which is made available to the U.S. by the treaty, except buildings and other facilities, other than housing, the use of which is retained by the United States (par. 2a).
2. When use of an area or portion of the United States ceases, all realty and non-removable improvements in that area (par. 2b).
3. When housing is made available for occupying by the Armed Forces of Panama, the housing units turned over for that purpose (par. 2c).
4. On termination of the treaty (par. 2d):
 - (a) real property and non-removable improvements used by the United States under the treaty and related agreements; and
 - (b) all remaining equipment related to the management, operation and maintenance of the canal.

Panama agrees to hold the U.S. harmless with respect to third party claims to the property transferred to Panama (par. 3).

Payments to Panama.

Paragraph 4 of Article XIII of the treaty provides that--

- The Republic of Panama shall receive "from the Panama Canal Commission" a return on the national resources dedicated to the operation of the canal in the form of three categories of annual payments:¹
 - (a) "An annual amount to be paid out of Canal operating revenues" computed at the rate of 30¢ per Panama Canal net ton, or its equivalency, for each vessel transiting the canal after entry into force of the treaty for which tolls are charged;² after five years the rate of 30¢ per Panama Canal ton is to be adjusted biennially to reflect changes in the wholesale price index for the preceeding two years.
 - (b) A fixed annuity of \$10 million to be paid "out of Canal operating revenues" and to "constitute fixed expense of the Panama Canal Commission."
 - (c) An additional annual amount of \$10 million "to be paid out of Canal operating revenues" to the extent such revenues exceed expenditures with a provision for carry over of unpaid balances of this payment to future years.

Article XIV "Settlement of Disputes." Questions concerning

¹An additional payment of \$10 million annually, to be adjusted after three years for inflation and other factors, is provided by paragraph 5 of Article III.

²On February 1, 1978, the amount of the payment for FY 1979 was estimated at \$46,786,000.

the interpretation of the treaty and related agreements are to be resolved through:

1. Consultation in the appropriate committees established pursuant to the treaty and related agreements;
2. Through diplomatic channels; or
3. Agreement to submit the matter to consultation, mediation, arbitration, or other procedure "as they may mutually deem appropriate."

Annex

PROCEDURES FOR THE CESSATION OR TRANSFER OF
ACTIVITIES CARRIED OUT BY THE PANAMA
CANAL COMPANY AND THE CANAL ZONE
GOVERNMENT AND ILLUSTRATIVE LIST OF THE
FUNCTIONS THAT MAY BE PERFORMED BY
THE PANAMA CANAL COMMISSION

Par. 1 provides that private economic activity in the areas made available for use by the United States are subject to Panamanian law, and that persons engaged in such activities six months before the date of the treaty may continue in accordance with pars. 2-7 of Article IX.

Par. 3 sets out an illustrative list of functions that may be performed by the Panama Canal Commission in the exercise of rights of the U.S. with respect to operation of the canal.

Pars. 2 and 4 prohibit continued performance by the Panama Canal Commission of certain activities carried out by the Panama Canal Company and Canal Zone Government prior to the treaty.

Par. 5 qualifies the provisions of pars. 2 and 4 by providing for (a) consultation between the U.S. and Panama before the Commission discontinues activities which are to be assumed by Panama or by private persons; and (b) continued performance by the Commission of activities or functions necessary to operation of the canal if arrangements cannot be made to insure the continued performance of such activities or functions.

¹Published in State Department, Selected Documents, No. 6A, p. 11

AGREED MINUTE¹

The Agreed Minute to the Panama Canal Treaty lists the treaties and other agreements abrogated by paragraph 1(c) of Article I of the treaty.

AGREEMENT IN IMPLEMENTATION OF ARTICLE III
OF THE PANAMA CANAL TREATY²

The Agreement has 21 Articles, 3 Annexes, an Agreed Minute, and a Map Atlas.

An analysis by the Department of State of the 21 Articles of the Agreement is printed in Senate Executive Report No. 95-12 on Executive N, 95th Congress, at pages 145-157.

Annex A to the Agreement contains specific descriptions of the areas and installations over which the United States has use rights under Article III of the Agreement (Selected Documents, No. 6B, p. 17).

Annex B identifies the port boundaries and installations referred to in Article V of the Agreement (Selected Documents, No. 6B, p. 22).

Annex C sets out procedural guarantees for trials under

¹Published in State Department, Selected Documents, No. 6A, p. 13.

²Id., pp. 1-24.

Panamanian law of United States citizen employees or dependents (Selected Documents, No. 6B, p. 24).

A Map Atlas contains detailed maps identifying boundaries and installations described in Annexes A and B. Both Annexes refer to more specific identifications and descriptions to be agreed on by the Coordinating Committee established by Article II of the Agreement, after a joint survey to be conducted by representatives of the two parties.

An "Agreed Minute to the Agreement in Implementation of Article III of the Panama Canal Treaty" contains 21 paragraphs explanatory of the meaning and effect of various provisions of the Agreement (Selected Documents, No. 6B, pp. 24-27).

AGREEMENT IN IMPLEMENTATION OF ARTICLE IV
OF THE PANAMA CANAL TREATY

This Agreement in effect constitutes a Status of Forces Agreement with Panama similar to such agreements with other countries in which United States Forces are stationed. The Agreement consists of 22 Articles, four Annexes, an Agreed Minute and a Map Atlas, all of which, with the exception of the Map Atlas, are set out in full in Selected Documents, No. 6B, pp. 28-49.

The Articles of the Agreement and two of the Annexes (A and B) are described in an analysis appearing at pages 158-171 of the Report of the Committee on Foreign Relations, United States Senate on Executive N, 95th Congress (Exec. Rept. No. 95-12).

Annex C, not described in the analysis included in the Report of the Committee on Foreign Relations, provides for coverage by Panamanian Social Security of certain employees of the Armed Forces who are not U.S. citizens and who are not covered by the U.S. civil service retirement system (Selected Documents, No. 6B, p. 46).

Annex D contains procedural quarantees applicable to a member of the Forces or the civilian component or a dependent prosecuted by the Panamanian authorities (Selected Documents, No. 6B, p. 46).

The "Agreed Minute to the Agreement in Implementation of Article IV of the Panama Canal Treaty" consists of 14 paragraphs explanatory of the meaning and specific effect of

various provisions of the Agreement (Selected Documents, No. 6B, pp. 47-49).

OTHER DOCUMENTS

In addition to the Treaty and the documents summarized above, the Department of State has also published the following additional documents relating to the Treaty:

1. Letter dated Sept. 7, 1977, from Ambassador Bunker to the Chief Treaty Negotiator for Panama (Bethancourt), describing the application of the wholesale price index in the calculation of the payment to Panama under paragraph 4(a) of Article XIII of the Treaty (Selected Documents, No. 6B, p. 52)

2. Letter dated Sept. 7, 1977, from Ambassador Bunker to the Chief Treaty Negotiator for Panama confirming the understanding that the Air Transport Services Agreement of March 31, 1949 will have no further application upon entry into force of the Panama Canal Treaty (Selected Documents, No. 6B, p. 52)

3. An agreement dated Sept. 7, 1977, between the treaty negotiators providing that the United States may conduct certain activities not "directly related to the specific purpose of the Panama Canal Treaty" subject to the terms of the Agreement. The activities enumerated include:

- (a) tropic testing;
- (b) telecommunications, meteorological, navigational and oceanographic activities;
- (c) activities of Inter-American Geodetic Survey;
- (d) humanitarian relief activities, including search and rescue;
- (e) schooling of Latin American military personnel. (Selected Documents, No. 6B, p. 53)

4. Agreement dated Sept. 7, 1977, pursuant to Article VI of the Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere of Oct. 12, 1940. This agreement establishes Barro Colorado Island in Gatun Lake as a Nature Monument within the meaning of the 1940 Convention and provides for continuation of existing facilities and scientific research at the Island (Selected Documents, No. 6B, pp. 53-56).

5. Note from Secretary of State Vance to the Ambassador of Panama (Galindo) regarding economic and military assistance to Panama. The program contemplated by this Note is discussed in the Executive Report No. 95-12 of the Senate Committee on Foreign Relations at page 98.

6. Exchange of Notes dated Sept. 7, 1977, relating to continuation of Air Traffic Control Services by the United States in Panama (Selected Documents, No. 6B, p. 58).

7. Note dated Sept. 7, 1977, initialed "E.B.," advising Panama of plans to establish a Panama Bureau of the United States Foreign Broadcast Information Service in the U.S. Embassy in Panama (Selected Documents, No. 6B, p. 58).

8. Exchange of Notes dated Sept. 7, 1977, relating to the continuation of operations and use of property in Panama by the Gorgas Memorial Institute of Tropical Medicine and Gorgas Memorial Laboratory (Selected Documents, No. 6B, pp. 59-60).

9. Exchange of Notes dated Sept. 1977, relating to the continuation of the activities of the Smithsonian Tropical Research Institute in Panama (Selected Documents, No. 6B, p. 61).

10. Exchange of Notes dated Sept. 7, 1977, designating the Smithsonian Tropical Research Institute as the custodian of the Barro Colorado Nature Monument (Selected Documents, No. 6B, p. 63).

RESERVATIONS, UNDERSTANDINGS AND CONDITIONS

The Senate resolution ratifying the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal by a resolution that incorporated two Amendments, two Conditions, four Reservations and five Understandings (Cong. Rec., March 16, 1978, pp. S3857-3858).

The Resolution of Ratification of the Panama Canal Treaty incorporated six Reservations and six Understandings (Cong. Rec., April 18, 1978, pp. S5796-5797). These modifications were incorporated in the Instruments of Ratification exchanged by the United States and Panama on June 16, 1978 (Department of State Bulletin, July 1978, pp. 52-57, attached for convenient reference in Appendix C).

Appendix B

PANAMA CANAL TREATIES AND OPERATING STRUCTURE

Excerpt from Hearings, Subcommittee on Panama Canal, Committee on Merchant Marine and Fisheries, House of Representatives, 95th Congress, 1st Session, Serial No. 95-20, Part I, pp. 232-234.

A. 1903 Treaty

In 1902, an act of Congress, popularly known as the Spooner Act, authorized the President to acquire control of the land and other rights necessary for the construction and operation of a transisthmian canal and to proceed with the construction of such a canal when such rights were obtained.²⁷ After an abortive effort to obtain the necessary rights in a treaty with Colombia, and following secession of Panama from the Republic of Colombia, the United States, on November 18, 1903, entered into a treaty with the Republic of Panama providing for the acquisition by the United States of the rights specified in the Spooner Act and for the construction and operation of the United States of a transisthmian canal at Panama. Article XIV provides that:

"As the price or compensation for the rights, powers, and privileges granted in this convention by the Republic of Panama to the United States, the Government of the United States agrees to pay to the Republic of Panama the sum of ten million dollars (\$10,000,000) in gold coin of the United States on the exchange of the ratification of this convention and also an annual payment during the life of this convention of two hundred and fifty thousand dollars (\$250,000) in like gold coin, beginning nine years after the date aforesaid...."

²⁷ 32 Stat. 481

B. 1936 Treaty

A treaty between the United States and the Republic of Panama signed March 2, 1936,²⁸ among other provisions, abrogated certain provisions of the 1903 treaty, and placed restrictions on residence, importations, and commercial activity in the Canal Zone.²⁹ Article VII of the 1936 treaty increased the amount of the annuity payable to the Republic of Panama under Article XIV of the 1903 treaty to four hundred thirty thousand Balboas (B/430,000) as defined in a separate monetary agreement, effected by an exchange of notes on the same date as the treaty. The treaty authorized payment of the annuity in any coin or currency provided the amount so paid was the equivalent of B/430,000 as defined in the monetary agreement.

C. 1955 Treaty

A third treaty between the United States and the Republic of Panama, signed January 25, 1955,³⁰ contained among other provisions, an article that increased the annuity to one million nine hundred thirty thousand Balboas (B/1,930,000) as defined by the agreement embodied in the exchange of notes of March 2, 1936, but authorized the United States to discharge its obligation with respect to payment of the annuity in any coin or currency provided the amount so paid is the equivalent of one million nine hundred thirty thousand balboas (B/1,930,000) as so defined.³¹

D. Panama Canal Organizational Structure

Construction of the Panama Canal was accomplished by the Isthmian Canal Commission under the provisions of the Spooner Act, *supra*. As construction approached completion, Congress passed the Panama Canal Act of August 24, 1912,³² providing for the opening, maintenance, protection, and operation of the Panama Canal and the sanitation and government of the Canal Zone. The Act authorized the President to discontinue the Isthmian Canal Commission and to complete, govern and operate the Panama Canal through a Governor of the Panama Canal. The pertinent provisions of the Panama Canal Act were later incorporated in the Canal Zone Code, enacted in 1934.³³

²⁸ 53 Stat. 1807

²⁹ Article III; see C.Z. Code, Appendix IX, § 34.

³⁰ TIAS 3297

³¹ Article I

³² 37 Stat. 560

³³ 48 Stat. 1122

The adjuncts of the Panama Canal, referred to in the Panama Canal Act, were principally consolidated in the operations of the Panama Railroad Company, originally created in 1849 under the laws of the State of New York as a private corporation for the construction and operation of a railroad across the Isthmus of Panama. At the time of the construction of the Panama Canal all the stock of the Company was acquired by the United States and, after the canal was completed, the railroad conducted certain business operations supporting the maintenance and operation of the canal, including operation of a transisthmian railroad, a steamship line operating between the United States and the Canal Zone, docks, harbor terminals, coaling plants for bunkering ships, commissaries for supplying employees and ships, dry and cold storage plants, hotels, and the telephone system of the Canal Zone. The Supreme Court has characterized these operations as auxiliaries primarily designed and used to aid in the canal's management and operation,³⁴ and they have been similarly described by the Congressional Committees responsible for Panama Canal affairs.³⁵

In 1945, the Government Corporation Control Act³⁶ designated the Panama Railroad Company as a wholly-owned government corporation and prohibited the existence of any such wholly-owned government corporations created under the laws of a state. Accordingly, in 1948, the Panama Railroad Company was reincorporated under a federal charter with authority to continue its operation in support of the maintenance and operation of the Panama Canal.³⁷

Under legislation enacted in 1950, a basic change in the organizational structure of the enterprise became effective July 1, 1951.³⁸ One purpose of the reorganization was to separate the business operations of the canal enterprise, including operation of the waterway, from those functions associated with civil government of the Canal Zone. All the functions of the agency previously known as The Panama Canal, except those relating to civil government, health and sanitation were transferred to the Panama Railroad Company which was renamed the Panama Canal Company. The Panama Canal agency retained its governmental functions and was renamed the Canal Zone Government. A second purpose of the reorganization was to give the Panama Canal Company authority to prescribe the rates of tolls for use of the canal, subject to final approval by the President.³⁹ Previously, power to prescribe rates of tolls had been vested exclusively in the President since the enactment of the Panama Canal Act in 1912.⁴⁰

³⁴ *New York ex rel. v. Rogers v. Graves*, 299 U.S. 401, 406 (1937)

³⁵ H. Rept. No. 2396, 80th Cong., pp. 1-2; S. Rept. No. 1401, 80th Cong., pp. 1-2

³⁶ 31 U.S.C. 841 et seq., 59 Stat. 597

³⁷ 62 Stat. 1076

³⁸ Act of September 26, 1950, 64 Stat. 1038

³⁹ See H. Rept. 2935, 81st Cong., and H. Doc. 460, 81st Cong., for analysis of the objectives of the Act of September 26, 1950.

⁴⁰ See Panama Canal Act of August 14, 1912, 37 Stat. 560, and 2 C.Z. Code (1934 ed.) § 411.

The basic provisions of the 1950 reorganization legislation were subsequently incorporated into the 1962 edition of the Canal Zone Code.⁴¹ Under the statutory scheme, the Panama Canal Company and the Canal Zone Government function as an integrated enterprise although each is an independent agency of the United States.⁴²

The Panama Canal Company is described in the law as a body corporate and an agency of the United States for the purpose of maintaining and operating the Panama Canal and conducting business operations incident thereto and incident to the civil government of the Canal Zone.⁴³

The powers of the Company are enumerated in its charter.⁴⁴ In general, the principal activities of the Company are (1) operations directly involved in the movement of ships through the canal and (2) supporting services. The latter include vessel repairs, harbor terminals, a railroad across the Isthmus, a supply ship operating between the United States and the Canal Zone, motor transportation facilities, storehouses, an electric power system, a communications system, a water system, and service activities essential for meeting the needs of employees, such as living quarters, commissaries and restaurants.

Under its charter the Company is required to be self-sustaining although appropriations are authorized to cover any operating losses,⁴⁵ or for capital improvements.⁴⁶ Appropriations for operating losses are required to be repaid.

The Company is also required to reimburse the Treasury for interest on the net direct investment of the United States in the corporation at rates fixed annually by the Secretary of the Treasury,⁴⁷ for the annuity paid under the 1903 treaty as amended by the 1936 treaty, and for the net cost of operation of the agency known as the Canal Zone Government.⁴⁸

The Board of Directors of the Company is required to review annually its working capital requirements together with foreseeable requirements for plant replacements and expansion and to pay any amounts in excess thereof into the Treasury.⁴⁹ Since 1950 the Company has paid \$40 million into the Treasury for this purpose.

⁴¹ 76A Stat. 1, et seq.

⁴² See 2 C.Z. Code §62(g)

⁴³ 2 C.Z. Code §§61-75, 121-123

⁴⁴ 2 C.Z. Code §§65-66

⁴⁵ 2 C.Z. Code §72

⁴⁶ 2 C.Z. Code §62

⁴⁷ 2 C.Z. Code §62(e)

⁴⁸ 2 C.Z. Code §62(g)

⁴⁹ 2 C.Z. Code §70

Exchange of Instruments of Ratification of Panama Canal Treaties

PRESIDENT'S REMARKS, PANAMA CITY COLISEUM, JUNE 16¹

First of all, I want to thank General Torrijos [Head of Government] and President Lakas for their invitation to participate in this great ceremony. I came to Panama and accepted this invitation because I want to dramatize my appreciation for this great achievement—a firmer, more productive friendship between the United States of America and the Republic of Panama and, more broadly, again for the cause of peace and cooperation among all nations.

We are honored by the presence of the leaders of the five democratic countries who gave encouragement to us and advice to both nations during the final treaty negotiations.² I am grateful to them not only for the serious and helpful roles they played in those final days and weeks but also for their continuing leadership in dealing with such crucial matters as world peace, nuclear nonproliferation, the status of human rights, and democratic governments and better relationships between the developed nations and the developing countries of the world.

It is now three-quarters of a century since the first spade of earth was turned in the building of the Panama Canal. This path between two seas remains one of the greatest and most benevolent creations ever wrought by human ingenuity.

As a neutral artery for the ships of all nations, the canal has contributed immensely to the peaceful work of the world. The treaties we solemnize today will help perpetuate that peaceful work for many generations to come.³

Under the treaties our two governments agree to maintain the neutrality and security of the canal. At the same time we reaffirmed our commitment to honor national sovereignty and the principle of nonintervention. These principles are enshrined in the charters of the Organization of American States and the United Nations.

During the long and difficult negotiations, both sides held to a vision of friendship and good will. Both sides were determined to build a new relationship of mutual respect,

fairness, and equity. Because of that vision, because of that determination, we were finally able to reach agreement.

Now, after 14 years on opposite sides of the bargaining table, we sit together as partners. We are equally committed to putting into practice the agreements we have forged. During the period of transition which lies ahead, the United States and Panama will be working closely together. Both our countries want their transition to be smooth and effective.

Under the treaties, both nations are committed to safeguarding the interest of those Americans and Panamanians who have operated the canal so efficiently and so expertly during its period of American stewardship. Together our two countries have set an example for peaceful and successful negotiations that has few parallels in history. We have demonstrated our mutual sincerity and good will.

In the face of disagreements, not only between the two nations but within the nations themselves—disagreements that were initially very deep—in the face of our vast disparity in size and power, we dealt with each other in good faith as equals and with equal determination to overcome all differences.

During the years ahead we will work as partners to make the promise of the treaties a reality. We, the people of the United States, and you, the people of Panama, still have history to make together.

TEXTS OF DOCUMENTS

Protocol of Exchange

PROTOCOL OF EXCHANGE OF INSTRUMENTS OF RATIFICATION REGARDING THE TREATY CONCERNING THE PERMANENT NEUTRALITY AND OPERATION OF THE PANAMA CANAL AND THE PANAMA CANAL TREATY

The undersigned, Jimmy Carter, President of the United States of America, and Omar Torrijos Herrera, Head of Government of the Republic of Panama, in the exercise of their respective constitutional authorities, have met for the purpose of delivering to each other the instruments of ratification of their respective governments of the Treaty Concerning the

Permanent Neutrality and Operation of the Panama Canal and of the Panama Canal Treaty (the "Treaties").

The respective instruments of ratification of the Treaties have been carefully compared and found to be in due form. Delivery of the respective instruments took place this day, it being understood and agreed by the United States of America and the Republic of Panama that, unless the Parties otherwise agree through an exchange of Notes in conformity with the resolution of the Senate of the United States of America of April 18, 1978, the exchange of the instruments of ratification shall be effective on April 1, 1979, and the date of the exchange of the instruments of ratification for the purposes of Article VIII of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and Article II of the Panama Canal Treaty shall therefore be April 1, 1979.

The ratifications by the Government of the United States of America of the Treaties recite in their entirety the amendments, conditions, reservations and understandings contained in the resolution of March 16, 1978, of the Senate of the United States of America advising and consenting to ratification of the Treaty Concerning the Permanent Neutrality and operation of the Panama Canal, and the reservations and understandings contained in the resolution of April 18, 1978, of the Senate of the United States of America advising and consenting to ratification of the Panama Canal Treaty.

Said amendments, conditions, reservations and understandings have been communicated by the Government of the United States of America to the Government of the Republic of Panama. Both governments agree that the Treaties, upon entry into force in accordance with their provisions, will be applied in accordance with the above-mentioned amendments, conditions, reservations and understandings.

Pursuant to the resolution of the Senate of the United States of America of March 16, 1978, the following text contained in the instrument of ratification of the United States of America of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and agreed upon by both governments is repeated herewith:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate."

The Republic of Panama agrees to the exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations, and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by those Treaties is based.

IN WITNESS WHEREOF, the respective Plenipotentiaries have signed this Protocol of Exchange at Panama, in duplicate, in the English and Spanish languages on this sixteenth day of June, 1978, both texts being equally authentic.

FOR THE UNITED STATES OF AMERICA: FOR THE REPUBLIC OF PANAMA:

JIMMY CARTER OMAR TORRILLOS HERRERA

U.S. Instrument—Panama Canal Treaty

JIMMY CARTER
President of the United States of America

TO ALL TO WHOM THESE PRESENTS
SHALL COME, GREETING:

CONSIDERING THAT:

The Panama Canal Treaty was signed at Washington on September 7, 1977; and

The Senate of the United States of America by its resolution of April 18, 1978, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Treaty, subject to the following:

(a) RESERVATIONS:

(1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of the Panama Canal Treaty, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the resolutions of ratification thereto, shall be only for the purpose of assuring that the Canal shall remain open, neu-

tral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) The instruments of ratification of the Panama Canal Treaty to be exchanged by the United States of America and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligation under paragraph 2 of Article XII of the Treaty.

(3) Notwithstanding any provision of the Treaty, no funds may be drawn from the Treasury of the United States of America for payments under paragraph 4 of Article XIII without statutory authorization.

(4) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Treaty at the date of termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the duration of the Treaty, and nothing in such paragraph may be construed as obligating the United States of America to pay, after the date of the termination of the Treaty, any such unpaid balance which shall have accrued before such date.

(5) Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by the Congress of the United States of America, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested by the predecessor Panama Canal Company by the Government of the United States of America and not reimbursed before the date of entry into force of the Treaty. Such reimbursement for such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) UNDERSTANDINGS:

(1) Before the first day of the three-year period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties

shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas referred to in paragraph 5 of Article III. If payments made under paragraph 5 of Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both parties, of any costs of services disputed by the two Parties pursuant to the reexamination of such costs provided for in this understanding.

(2) Nothing in paragraph 3, 4, or 5 of Article IV of the Treaty may be construed to limit either the provisions of the first paragraph of Article IV providing that each Party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of the Treaty.

(3) Nothing in paragraph 4 (c) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2 (d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 4 (c) of Article XIII.

(4) Any agreement concluded pursuant to paragraph 11 of Article IX of the Treaty with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both Parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the

instrument of ratification to be exchanged with the Government of the Republic of Panama.

Now, THEREFORE, I, Jimmy Carter, President of the United States of America, ratify and confirm the Panama Canal Treaty, subject to the aforementioned reservations and understandings, and on behalf of the United States of America undertake to fulfill it faithfully. I further hereby waive, in the name of the United States of America, the rights of the United States of America under paragraph 2 of Article XIII of the Panama Canal Treaty and release the Republic of Panama from its obligations under paragraph 2 of Article XII of the Panama Canal Treaty.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

DONE at the city of Washington, this 15th day of June in the year of our Lord one thousand nine hundred seventy-eight and of the independence of the United States of America the two hundred second.

By the President:

JIMMY CARTER

Acting Secretary of State
WARREN CHRISTOPHER

Panamanian Instrument—Panama Canal Treaty

Whereas the Panama Canal Treaty was signed in Washington on September 7, 1977, by the authorized representatives of the Government of the Republic of Panama and of the Government of the United States of America;

Whereas the Republic of Panama, by means of the plebiscite stipulated in Article 274 of its Political Constitution, ratified the aforementioned Panama Canal Treaty;

Whereas the Senate of the United States of America gave its advice and consent to the ratification of the Panama Canal Treaty with the following understandings and reservations:

RESERVATIONS.

(1) Pursuant to its adherence to the principle of nonintervention, any action taken by the United States of America in the exercise of its rights to assure that the Panama Canal shall remain open, neutral, secure, and accessible, pursuant to the provisions of the Panama Canal Treaty, the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, and the resolutions of ratification thereto, shall be only for the purpose of assuring that the Canal shall remain open, neutral, secure, and accessible, and shall not have as its purpose or be interpreted as a right of intervention in the internal affairs of the Republic of Panama or interference with its political independence or sovereign integrity.

(2) The instruments of ratification of the Panama Canal Treaty to be exchanged by the United States of America and the Republic of Panama shall each include provisions whereby each Party agrees to waive its rights and release the other Party from its obligations under

paragraph 2 of Article XII of the Treaty.

(3) Notwithstanding any provision of the Treaty, no funds may be drawn from the Treasury of the United States of America for payments under paragraph 4 of Article XIII without statutory authorization.

(4) Any accumulated unpaid balance under paragraph 4(c) of Article XIII of the Treaty at the date of termination of the Treaty shall be payable only to the extent of any operating surplus in the last year of the duration of the Treaty, and nothing in such paragraph may be construed as obligating the United States of America to pay, after the date of the termination of the Treaty, any such unpaid balance which shall have accrued before such date.

(5) Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979.

(6) After the date of entry into force of the Treaty, the Panama Canal Commission shall, unless otherwise provided by legislation enacted by the Congress of the United States of America, be obligated to reimburse the Treasury of the United States of America, as nearly as possible, for the interest cost of the funds or other assets directly invested in the Commission by the Government of the United States of America and for the interest cost of the funds or other assets directly invested in the predecessor Panama Canal Company by the Government of the United States of America and not reimbursed before the date of entry into force of the Treaty. Such reimbursement for such interest costs shall be made at a rate determined by the Secretary of the Treasury of the United States of America and at annual intervals to the extent earned, and if not earned, shall be made from subsequent earnings. For purposes of this reservation, the phrase "funds or other assets directly invested" shall have the same meaning as the phrase "net direct investment" has under section 62 of title 2 of the Canal Zone Code.

(b) UNDERSTANDINGS:

(1) Before the first day of the three-year period beginning on the date of entry into force of the Treaty and before each three-year period following thereafter, the two Parties shall agree upon the specific levels and quality of services, as are referred to in paragraph 5 of Article III of the Treaty, to be provided during the following three-year period and, except for the first three-year period, on the reimbursement to be made for the costs of such services, such services to be limited to such as are essential to the effective functioning of the Canal operating areas and the housing areas referred to in paragraph 5 of Article III. If payments made under paragraph 5 of

Article III for the preceding three-year period, including the initial three-year period, exceed or are less than the actual costs to the Republic of Panama for supplying, during such period, the specific levels and quality of services agreed upon, then the Panama Canal Commission shall deduct from or add to the payment required to be made to the Republic of Panama for each of the following three years one-third of such excess or deficit, as the case may be. There shall be an independent and binding audit, conducted by an auditor mutually selected by both Parties, of any costs of services disputed by the two Parties pursuant to the reexamination of such costs provided for in this understanding.

(2) Nothing in paragraph 3, 4, or 5 of Article IV of the Treaty may be construed to limit either the provisions of the first paragraph of Article IV providing that each Party shall act, in accordance with its constitutional processes, to meet danger threatening the security of the Panama Canal, or the provisions of paragraph 2 of Article IV providing that the United States of America shall have primary responsibility to protect and defend the Canal for the duration of the Treaty.

(3) Nothing in paragraph 4 (c) of Article XIII of the Treaty shall be construed to limit the authority of the United States of America, through the United States Government agency called the Panama Canal Commission, to make such financial decisions and incur such expenses as are reasonable and necessary for the management, operation, and maintenance of the Panama Canal. In addition, toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 4 (c) of Article XIII.

(4) Any agreement concluded pursuant to paragraph 11 of Article IX of the Treaty with respect to the transfer of prisoners shall be concluded in accordance with the constitutional processes of both Parties.

(5) Nothing in the Treaty, in the Annex or Agreed Minute relating to the Treaty, or in any other agreement relating to the Treaty obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(6) The President shall include all reservations and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

The Republic of Panama agrees to the exchange of the instruments of ratification of the Panama Canal Treaty on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and

which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Panama Canal Treaty, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by that Treaty is based.

The Republic of Panama declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakable will of the Panamanian people. Therefore, the Republic of Panama will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs.

The Head of Government of the Republic of Panama, availing himself of the powers granted by Article 277 of the Constitution, after having considered the aforementioned Panama Canal Treaty, hereby ratifies it and, in the name of the Republic of Panama, undertakes to comply with it faithfully. The Head of Government further hereby waives, in the name of the Republic of Panama, the rights of the Republic of Panama under paragraph 2 of Article XII of the Panama Canal Treaty and releases the United States of America from its obligations under paragraph 2 of Article XII of the Panama Canal Treaty.

IN WITNESS WHEREOF, this instrument of ratification is signed by the Head of Government of the Republic of Panama.

DONE at Panama City, Republic of Panama, this sixteenth day of June 1978.

OMAR TORRIJOS HERRERA

U.S. Instrument—Neutrality Treaty

JIMMY CARTER

President of the United States of America

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETING:

CONSIDERING THAT:

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (Neutrality Treaty) was signed at Washington on September 7, 1977; and

The Senate of the United States of America by its resolution of March 16, 1978, two-thirds of the Senators present concurring therein, gave its advice and consent to ratification of the Neutrality Treaty, subject to the following:

(a) AMENDMENTS:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal."

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: 'The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly.'"

(b) CONDITIONS:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of

America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate."

(c) RESERVATIONS:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States of America by the American Battle Monuments Commission, including the display of the flag of the United States of America, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(2) The flag of the United States of America may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America; and

(B) shall have announced, immediately after the date of exchange of instruments of ratification, plans, to be carried out at the expense of the Government of the United States of America, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States of America from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States of America for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery

...before the date of entry into force of the Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (1); and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B) (1) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such Article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) UNDERSTANDINGS:

(1) Paragraph 1 (c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(A) the costs of operating and maintaining the Panama Canal;

(B) the competitive position of the use of the Canal in relation to other means of transportation;

(C) the interests of both Parties in maintaining their domestic fleets;

(D) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(E) the interests of both Parties in maximizing their international commerce.

The United States of America and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States of America or the Republic of Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in Annex A or B thereto, in the Protocol relating to the Treaty, or in any other agreement relating to the Treaty, obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or interna-

tional military education and training to the Republic of Panama.

(5) The President shall include all amendments, conditions, reservations, and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

NOW, THEREFORE, I, Jimmy Carter, President of the United States of America, ratify and confirm the Neutrality Treaty, subject to the aforementioned amendments, conditions, reservations and understandings, and on behalf of the United States of America undertake to fulfill it faithfully.

IN TESTIMONY WHEREOF, I have signed this instrument of ratification and caused the Seal of the United States of America to be affixed.

Done at the city of Washington this 15th day of June in the year of our Lord one thousand nine hundred seventy-eight and of the independence of the United States of America the two hundred second.

By the President:
JIMMY CARTER

Acting Secretary of State
WARREN CHRISTOPHER

Panamanian Instrument—Neutrality Treaty

Whereas the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal was signed in Washington on September 7, 1977, by the authorized representatives of the Government of the Republic of Panama and of the Government of the United States of America;

Whereas the Republic of Panama, by means of the plebiscite stipulated by Article 274 of its Political Constitution, ratified the aforementioned Neutrality Treaty;

Whereas the Senate of the United States of America gave its advice and consent to the ratification of the aforementioned Neutrality Treaty with the following understandings, reservations, conditions, and amendments:

(a) AMENDMENTS:

(1) At the end of Article IV, insert the following:

"A correct and authoritative statement of certain rights and duties of the Parties under the foregoing is contained in the Statement of Understanding issued by the Government of the United States of America on October 14, 1977, and by the Government of the Republic of Panama on October 18, 1977, which is hereby incorporated as an integral part of this Treaty, as follows:

"Under the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal (the Neutrality Treaty), Panama and the United States have the responsibility to assure that the Panama Canal will remain open and secure to ships of all nations. The correct interpretation of this principle is that each of the two countries shall, in accordance with their

respective constitutional processes, defend the Canal against any threat to the regime of neutrality, and consequently shall have the right to act against any aggression or threat directed against the Canal or against the peaceful transit of vessels through the Canal.

"This does not mean, nor shall it be interpreted as, a right of intervention of the United States in the internal affairs of Panama. Any United States action will be directed at insuring that the Canal will remain open, secure, and accessible, and it shall never be directed against the territorial integrity or political independence of Panama."

(2) At the end of the first paragraph of Article VI, insert the following:

"In accordance with the Statement of Understanding mentioned in Article IV above: The Neutrality Treaty provides that the vessels of war and auxiliary vessels of the United States and Panama will be entitled to transit the Canal expeditiously. This is intended, and it shall so be interpreted, to assure the transit of such vessels through the Canal as quickly as possible, without any impediment, with expedited treatment, and in case of need or emergency, to go to the head of the line of vessels in order to transit the Canal rapidly."

(b) CONDITIONS:

(1) Notwithstanding the provisions of Article V or any other provision of the Treaty, if the Canal is closed, or its operations are interfered with, the United States of America and the Republic of Panama shall each independently have the right to take such steps as each deems necessary, in accordance with its constitutional processes, including the use of military force in the Republic of Panama, to reopen the Canal or restore the operations of the Canal, as the case may be.

(2) The instruments of ratification of the Treaty shall be exchanged only upon the conclusion of a Protocol of Exchange, to be signed by authorized representatives of both Governments, which shall constitute an integral part of the Treaty documents and which shall include the following:

"Nothing in the Treaty shall preclude the Republic of Panama and the United States of America from making, in accordance with their respective constitutional processes, any agreement or arrangement between the two countries to facilitate performance at any time after December 31, 1999, of their responsibilities to maintain the regime of neutrality established in the Treaty, including agreements or arrangements for the stationing of any United States military forces or the maintenance of defense sites after that date in the Republic of Panama that the Republic of Panama and the United States of America may deem necessary or appropriate."

(c) RESERVATIONS:

(1) Before the date of entry into force of the Treaty, the two Parties shall begin to negotiate for an agreement under which the American

Battle Monuments Commission would, upon the date of entry into force of such agreement and thereafter, administer, free of all taxes and other charges and without compensation to the Republic of Panama and in accordance with the practices, privileges, and immunities associated with the administration of cemeteries outside the United States of America by the American Battle Monuments Commission, including the display of the flag of the United States of America, such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(2) The flag of the United States of America may be displayed, pursuant to the provisions of paragraph 3 of Article VII of the Panama Canal Treaty, at such part of Corozal Cemetery in the former Canal Zone as encompasses the remains of citizens of the United States of America.

(3) The President—

(A) shall have announced, before the date of entry into force of the Treaty, his intention to transfer, consistent with an agreement with the Republic of Panama, and before the date of termination of the Panama Canal Treaty, to the American Battle Monuments Commission the administration of such part of Corozal Cemetery as encompasses the remains of citizens of the United States of America; and

(B) shall have announced, immediately after the date of exchange of instruments of ratification, plans, to be carried out at the expense of the Government of the United States of America, for—

(i) removing, before the date of entry into force of the Treaty, the remains of citizens of the United States of America from Mount Hope Cemetery to such part of Corozal Cemetery as encompasses such remains, except that the remains of any citizen whose next of kin objects in writing to the Secretary of the Army not later than three months after the date of exchange of the instruments of ratification of the Treaty shall not be removed; and

(ii) transporting to the United States of America for reinterment, if the next of kin so requests, not later than thirty months after the date of entry into force of the Treaty, any such remains encompassed by Corozal Cemetery and, before the date of entry into force of the

Treaty, any remains removed from Mount Hope Cemetery pursuant to subclause (i), and

(C) shall have fully advised, before the date of entry into force of the Treaty, the next of kin objecting under clause (B) (i) of all available options and their implications.

(4) To carry out the purposes of Article III of the Treaty of assuring the security, efficiency, and proper maintenance of the Panama Canal, the United States of America and the Republic of Panama, during their respective periods of responsibility for Canal operation and maintenance, shall, unless the amount of the operating revenues of the Canal exceeds the amount needed to carry out the purposes of such Article, use such revenues of the Canal only for purposes consistent with the purposes of Article III.

(d) UNDERSTANDING

(1) Paragraph 1 (c) of Article III of the Treaty shall be construed as requiring, before any adjustment in tolls for use of the Canal, that the effects of any such toll adjustment on the trade patterns of the two Parties shall be given full consideration, including consideration of the following factors in a manner consistent with the regime of neutrality:

(A) the costs of operating and maintaining the Panama Canal;

(B) the competitive position of the use of the Canal in relation to other means of transportation;

(C) the interests of both Parties in maintaining their domestic fleets;

(D) the impact of such an adjustment on the various geographical areas of each of the two Parties; and

(E) the interests of both Parties in maximizing their international commerce.

The United States of America and the Republic of Panama shall cooperate in exchanging information necessary for the consideration of such factors.

(2) The agreement "to maintain the regime of neutrality established in this Treaty" in Article IV of the Treaty means that either of the two Parties to the Treaty may, in accordance with its constitutional processes, take unilateral action to defend the Panama Canal against any threat, as determined by the Party taking such action.

(3) The determination of "need or emergency" for the purpose of any vessel of war or auxiliary vessel of the United States of America or the Republic of Panama going to the head of the line of vessels in order to transit the Panama Canal rapidly shall be made by the nation operating such vessel.

(4) Nothing in the Treaty, in Annex A or B thereto, in the Protocol relating to the Treaty, or in any other agreement relating to the Treaty, obligates the United States of America to provide any economic assistance, military grant assistance, security supporting assistance, foreign military sales credits, or international military education and training to the Republic of Panama.

(5) The President shall include all amend-

ments, conditions, reservations, and understandings incorporated by the Senate in this resolution of ratification in the instrument of ratification to be exchanged with the Government of the Republic of Panama.

The Republic of Panama agrees to the exchange of the instruments of ratification of the aforementioned Neutrality Treaty on the understanding that there are positive rules of public international law contained in multilateral treaties to which both the Republic of Panama and the United States of America are Parties and which consequently both States are bound to implement in good faith, such as Article 1, paragraph 2 and Article 2, paragraph 4 of the Charter of the United Nations, and Articles 18 and 20 of the Charter of the Organization of American States.

It is also the understanding of the Republic of Panama that the actions which either Party may take in the exercise of its rights and the fulfillment of its duties in accordance with the aforesaid Neutrality Treaty, including measures to reopen the Canal or to restore its normal operation, if it should be interrupted or obstructed, will be effected in a manner consistent with the principles of mutual respect and cooperation on which the new relationship established by that Treaty is based.

The Republic of Panama declares that its political independence, territorial integrity, and self-determination are guaranteed by the unshakable will of the Panamanian people. Therefore, the Republic of Panama will reject, in unity and with decisiveness and firmness, any attempt by any country to intervene in its internal or external affairs.

The Head of Government of the Republic of Panama, availing himself of the powers granted by Article 277 of the Constitution, after having considered the aforementioned Neutrality Treaty, hereby ratifies it and, in the name of the Republic of Panama, undertakes to comply with it faithfully.

IN WITNESS WHEREOF, this instrument of ratification is signed by the Head of Government of the Republic of Panama.

DONE at Panama City, Republic of Panama, this sixteenth day of June 1978.

OMAR TORRIJOS HERRERA □

Letters of Credence

The following newly appointed Ambassadors recently presented their credentials to President Carter:

April 6
Bolivia—Carlos Iturralde Ballivian

June 4
Chile—José Miguel Barros
Costa Rica—José Rafael Echeverría □

¹Text from Weekly Compilation of Presidential Documents of June 26, 1978.

²The ceremony was attended by President Alfonso Lopez (Colombia), President Rodrigo Carazo (Costa Rica), Prime Minister Michael Manley (Jamaica), President Jose Lopez Portillo (Mexico), and President Carlos Perez (Venezuela).

³For texts of the Panama Canal Treaty and the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, initiated by President Carter and Gen. Torrijos on Sept. 7, 1977, see BULLETIN of Oct. 17, 1977, p. 483. For texts of the Senate additions to the treaties, see BULLETIN of May 1978, p. 52. The Senate gave its advice and consent to the neutrality treaty on Mar. 16, 1978, and to the Panama Canal Treaty on Apr. 18.

Mr. HUBBARD. I would like to introduce Congressman George Hansen. The gentleman who now appears before us needs no introduction to those interested in the Panama Canal. In the 95th Congress, he was a virtual whirlwind of activity on the canal issue, authoring a resolution that was cosponsored by a majority of the House Members on the disposition of U.S. property in the Canal Zone. He introduced and, in many cases, saw passed several amendments limiting the authority of the Executive to implement the Panama Canal treaty without the authority of legislation. He has been a constant guardian of the basic powers of the House of Representatives.

Congressman Hansen, we welcome you here today as one of the members of Congress from Idaho, and we look forward to your statement.

**STATEMENT OF HON. GEORGE HANSEN, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF IDAHO**

Mr. HANSEN. Thank you, Mr. Chairman. In opening, I would like to commend the chairman of this subcommittee, and the chairman of the full committee for the great efforts they have put forth in attempting to maintain the position of the House of Representatives in a matter of such grave circumstance, and certainly I commend many other members of this committee who have also been deeply involved. I think all of us realize that there is a basic constitutional issue involved in the separation of powers doctrine. We want to be sure as Members of the House of Representatives that the prerogatives of this House, as Representatives of the people of the United States, are upheld.

So I commend the chairman of the subcommittee, and the chairman of the full committee for initiating alternative legislation which, I think, has great merit and, hopefully, will be given every consideration not only by this committee, but by other committees and key people who are concerned with the future of the Panama Canal.

Mr. Chairman, distinguished members of the committee, I appreciate this opportunity to appear before you today in behalf of the people of the Second District of Idaho, as well as what I feel to be a majority of the people of the United States.

The Panama Canal Treaties, which squeaked through the Senate last year, are by no means a fait accompli. However, various members of the administration would have us think so.

I have spoken out on many occasions during the past few years to urge the House of Representatives to assert its legitimate role with respect to the appropriations process and the disposition of U.S. property and territory in the Canal Zone. Mr. Chairman, I feel that a bad decision was made by the other body, but I don't think this bad decision has to stand; I feel there can be reversal or there can be amendment. And I hope that this body will work its will, and work its will in context with the feeling of the people of the United States and their welfare.

I believe it is unconstitutional and inappropriate for the multibillion dollar investment of the United States in the Canal Zone to be transferred to the Republic of Panama by treaty alone. Article IV, section 3, clause 2 of the Constitution gives to the Congress the

exclusive power to dispose of U.S. property and territory. Failure to exercise that power in this crucial decision on the Canal Zone will be a disastrous precedent for the doctrine of separation of powers in our Government.

And there are some asides on this, Mr. Chairman: The fact that if we do not work our will properly, in anticipation of what can happen, we could find ourselves in a tremendously embarrassing situation in the world, not to mention a chaotic situation in the Canal Zone, because we have been committed to a degree by the action of the other body. If we do not take timely action to either amend or reverse the process which has been invoked there, we could find ourselves hostage to appeals to international courts, the United Nations, whatever, in an attempt to fulfill certain obligations that, the other body has seemed to oblige us to.

And, Mr. Chairman, I feel that there has been some mistaken testimony given about the need to unite the country of Panama, without giving attention to the fact that in doing so they were dividing the United States of America. What I mean by this is we have had air lanes, sea lanes, and land lanes that have united this Nation from coast to coast, and what we are doing with the transfer of the Panama Canal is proposing to put a foreign toll booth on one of the major lanes of unification for this Nation, the sea lane. And I feel that there is no real benefit for the citizens of the United States for this action, and not even to the citizens of Panama, because it is not the citizens of Panama that seem to stand to gain the great benefit from this, but, indeed, some of the large financial interests that have exploited the situation in Panama.

When I was there recently visiting with the new president of Panama, President Royo, I was interested to find out that—and this was, of course, with President Royo and his Vice President, who was formerly a member of the Bank of Panama—many of the large loans that have been in controversy over the Panama Canal issue have now been rolled for even as long as 10 years. This is hundreds of millions of dollars. Apparently the action taken by the other body last year has improved the financial statement of the nation of Panama sufficiently for the banks to take this action.

Now, during the 95th Congress, my amendments to House Concurrent Resolution 559, the first concurrent resolution on the budget; S. 3486, fiscal year 1979 DOD Authorizations Act; and H.R. 12598, the Foreign Relations Assistance Authorizations Act, precluded spending any funds in the Panama Canal Zone for any purpose which would begin or initiate implementation of the Panama Canal Treaties without a specific act of Congress. These amendments passed in both the House and the Senate, thus fully establishing the intent of Congress and specific points of law.

In August of last year, the Congress was asked to approve the first of many payments to the Republic of Panama in connection with the constitutionally questionable Panama Canal Treaties recently approved by the Senate. In a business-as-usual request in the current foreign aid appropriations legislation, the Congress was asked for \$100 million in loans, grants, insurance, and aid to Panama, despite the fact that such consideration should have been handled under separate implementing legislation.

This year, the Congress will again be asked to appropriate many millions of dollars on numerous occasions to be used in the giveaway of the Panama Canal. It is highly inappropriate for us to consider such proposals. The American taxpayer deserves to see one price tag for this treaty, and I think the long-awaited implementing legislation must be properly handled in order to protect the taxpayers of this country.

Now, Mr. Chairman, I would draw your attention to the fact that in addition to those things cited by Chairman Murphy that should be consolidated and controlled in implementing legislation, we are going to be faced in budget considerations this year with all sorts of line items buried all through the budget, of various expenses which are brought about by the need to implement the Panama Canal Treaties if we are to carry them forth as directed by the Senate. There are such things as the transfer of graves in Panama for millions of dollars, military realignment, canal realignment programs, post office transfer to the military which has been heretofore paid for by canal funding; pension program revisions we are going to be faced with, and schools and police, and added expenses for anything from fences to the use of the railroad that we once had privileges to.

The Federal Aviation Administration, when I was down there recently, at that time consummated an agreement to turn over 5 million dollars' worth of equipment to the Republic of Panama effective October 1. I found also that the World Bank has done something that was very unorthodox; they funded the development and building of the new Panama City airport when they have refused to do so in all other nations of Central and South America, which shows some kind of political favoritism going on. And, of course, there are the foreign aid increases we have just covered.

So we find a tremendous amount of money involved in this situation. The American taxpayer deserves to see one price tag for the treaty, and the long-awaited implementing legislation must be properly amended in order to protect the taxpayers of this country. I feel it is not only appropriate, but necessary, for Congress to suspend and embargo all aid to Panama until it can be considered as part of one implementing package of legislation in order for Members of Congress and American citizens to see just what total costs are involved in the proposed transfer of the Panama Canal.

Recent developments in Panama demand this action now more than ever. To proceed with special scrutiny of the total aid package slated for Panama during the next year and the years to follow would be a gross injustice to American citizens and to the citizens of Panama as well. This is particularly true since such massive assistance can be expected to prop up the crumbling, bankrupt and corrupt dictatorship of Gen. Omar Torrijos, masquerading like a wolf in sheep's clothing under the new face of President Aristides Royo.

Last year, the Government of Panama issued a new foreign policy statement on July 19. It gave further confirmation of the Communist influence in the Torrijos regime and its close adherence to the Moscow line by such demands as: United States, get out of Guantanamo; Israel, get out of Arab lands; United States, free Puerto Rico, and other similar invectives. Other clauses raised

doubt of Panama's intention to honor new canal treaty commitments. Certainly, it would be a great tragedy if our actions served to guarantee continued repression of human rights within Panama, the endangering of lives of many American and Panamanian citizens, and the virtual assurance of increased Communist activity jeopardizing canal operations.

Now, Mr. Chairman, when I was in Central America in January, I also had the privilege of visiting President Somoza and the country of Nicaragua. It is no secret that the Sandinista operation in Nicaragua is closely allied with the elements in Panama. We know that General Torrijos has been dabbling in Sandinista activities in Nicaragua for a long time, by providing rest and recuperation to the Sandinista, by helping to form troops to go up to fight the Government of Nicaragua, and any number of other things. And I find that the inconsistency of allowing the Republic of Panama to build an airport with World Bank funds is unfortunately counter-matched by the denial of a loan through the International Monetary Fund to the Government of Nicaragua, even though it properly qualified, because of admitted political considerations. It is time that we got the improper, if not illegal, political considerations out of the monetary funds so that they stand as they should on financial considerations alone. The U.S. State Department is out of line and, as a member of the House Banking Committee, I am insisting on a review or investigation.

I must point out that the Carter administration at first emphatically and for months stated that the treaties would not cost the American taxpayer a single dollar. And I would like to refer, Mr. Chairman, to one of the thick books that came out of the Panama Canal Treaty considerations, "The Panama Canal Treaties Debate, 1977 and 1978," and quote a few statements very briefly.

One of these, Mr. Chairman, is the statement by Mr. Solomon, the Undersecretary of State for Monetary Affairs, and his quote is—and this is on page 300—"My understanding is that these payments represent Panama's share of the benefits from operation of the canal; they will be paid out of canal revenues and not out of U.S. tax revenues." Another one, Mr. Chairman, is a statement by Warren Christopher, Deputy Secretary of State, which states, "We insisted during the negotiations that payments to Panama for its contribution to the canal enterprise be drawn entirely from the canal's earnings, but the treaties will not require any appropriations from the American taxpayer."

Another quote, Mr. Chairman, from Senator Church, the new chairman of the Foreign Relations Committee, where he introduced a statement in answer to a question that said, "All the studies relating to the costs of operating the Panama Canal and to the possibility of increasing canal tolls indicate that revenues will meet expenditures, including the payments to be made to Panama under the new treaties."

Another one, Mr. Chairman, is by Senator Sarbanes, who said in colloquy on the floor of the Senate, "What the President said in his statement to the people was that under the new treaty, any payments to Panama will come from tolls paid by ships which use the canal." Mr. Goldwater said, "That is wrong." Mr. Sarbanes said, "I think that is an accurate statement, and in the course of this

debate, we can show that it is an accurate statement." Mr. Goldwater said, "It is not accurate." Mr. Sarbanes said, "Any payment to Panama will come from the tolls paid by ships that use the canal."

And, then, Mr. Chairman, finally, I point to the fact that Cyrus Vance stated, on page 1845 of this book, when the Secretary of State testified before the Foreign Relations Committee, quote: "The treaties require no new appropriations, nor do they add to the burden of the American taxpayer." This is, of course, the point that I want to make in my testimony today that there was full and complete denial of any costs to the taxpayer.

Then, in February of last year, they finally admitted in a letter to every Senator that there would be a \$600 million cost to the treaties, in addition to anticipated loans, guarantees, and other nondirect programs. This fact was reluctantly acknowledged in a letter signed by Secretary of State Vance, Secretary of Defense Harold Brown, and Secretary of the Army Clifford Alexander that the treaties would require \$633 million in appropriated funds and lost revenues to the U.S. Treasury. The appropriated funds and lost revenues added to the loans and guarantees promise a total assistance program to Panama of billions of U.S. tax dollars.

Under articles I and IV of the U.S. Constitution, the House of Representatives has the authority and responsibility for approving or disapproving the large transfer of U.S. property and taxpayer dollars envisioned in the Panama Canal Treaty, not to mention protecting the people's right to know the total amounts involved.

Concerns which should be dealt with by the Congress prior to any decision to transfer the Panama Canal and huge amounts of American dollars are: One, the recent pro-Communist foreign policy statement by the Panamanian Foreign Ministry that the United States should get out of Guantanamo, allow self-determination for Puerto Rico, and force Israel to withdraw from all occupied Arab lands;

Two, human rights violations within Panama, and the statement of the Catholic Church condemning the scandalous state of affairs under General Torrijos, whose government continues under President Royo;

Three, the recent disclosure of Panama's Minister of Housing that \$18 million of U.S. aid was missing and unaccounted for;

Four, the refusal of the Panamanian Government to negotiate a settlement with American citizens whose Panama property has been nationalized. Over 100 American citizens have long been seeking relief in vain from the government of General Torrijos.

Number five, Panama's specific rejection of the protocols relating to the DeConcini reservation and other treaty provisions in the exchange of instruments of ratification. And, of course, we could name others—anywhere from Senator Cannon to Senator Brooke.

Six, the recent defiance of congressional committee authority, official congressional legislative intent, and the Brooke amendment in the 1978 U.S. Senate treaty approval by the Department of Defense and the Department of the Army in stealing \$10.9 million from the taxpayers for a DOD treaty implementing military construction contract in Panama—a contract which, itself, was issued in an illegal and inappropriate manner.

U.S. payments to the Republic of Panama are a subject near and dear to the hearts of Panamanian leaders these days. The reason is Panama's crushing debt. The total debt of the Panamanian Government to U.S. banks is reported by the Library of Congress at \$1.7 billion. The Department of Planning of the Republic of Panama has stated that no less than 39 percent of Panama's annual budget is being used to service its foreign debt.

Leading the parade of American banks involved in Panama are the First National City Bank and Chase Manhattan Bank, which is the flagship bank for the farflung Rockefeller financial interests. Both of these banks serve as fiscal agents for the Government of Panama. In one advertisement for a \$115 million loan to Panama, for example, First National City Bank is listed as the agent for the loan. Other participating banks included the Bank of America, Banker's Trust, Chase Manhattan, the First National Bank of Boston, the First National Bank of Chicago, the Republic National Bank of Dallas and, of course, Sol Linowitz' own Marine Midland Bank.

Now, Mr. Chairman, one might well ask, why did these New York banks pour all that money into Torrijos hands. It seems very clear that the loans were a trade-off for Torrijos decision—on the advice of leading New York banks—to reorganize Panama's banking laws in July 1970. This reorganization provided a favorable haven, free of taxes and onerous regulations, for foreign banks in Panama, much as Panama has long provided a flag of convenience for world shipping. Since the 1970 legal change, total banking assets in Panama, a nation of only 1.7 million people, have expanded enormously from a few banks with a few million dollars to 73 international banks, or more, with total assets of \$8.6 billion, conducting transactions throughout the world. Prominent among the U.S. banks expanding rapidly in Panama since the 1970 legislation are the First National City Bank, the Bank of America, Chase Manhattan and the Marine Midland Bank.

If any of you from any other State than New York would stop and think how many of the big international banks you have in proportion to your population, despite the size of your economy, I think you would get the gist of the comparison.

The deal was beneficial to both parties, then, inasmuch as the U.S. banks received a haven for their operations and the Torrijos regime was able to acquire great sources of funds, as well as solidify its political power in Panama. But now the U.S. taxpayer is being subtly ripped off to bail out the banks, a reverse of the days of Jesse James. And as I said, when I visited with Panama's new President Royo and the Vice President, a former official of the Bank of Panama, I was given to understand that hundreds of millions of dollars of loans have already been rolled for as long as 10 years, or maybe renewed is the nice word.

The taxpayer will not be the only one who suffers because of this treaty. The consumer and the farmer will be asked to make special sacrifices. And I think that it is important at this point, Mr. Chairman, to be direct in terms of what we are talking about. I spoke to some of the officials, including General Parfitt, about what the treaties mean to the American consumer—the transfer of the canal, the placing of a toll booth by Panama on our primary

American coast-to-coast shipping lane. I was given to understand this means as much as 1½ to 2 cents per gallon on gasoline and on fuel oil for every American consumer in the eastern and midwestern parts of the United States who use Alaskan oil. And you know what the normalizing process will be—the Arabs will get an additional 1½ to 2 cents also, because that is just the way it works. And it will level out to the west coast as well as the east coast.

For anybody concerned about dollar gasoline, this is going to contribute to the problem, and it is particularly provocative at a time when we are experiencing a danger of fuel shortages. Certainly, this is hardly the time to be deliberately adding to the problems we face.

I ask that a report from Janice E. Baker from the Congressional Research Service, entitled "Possible Effects of Increased Canal Toll Fees and Restricted Access to the Panama Canal on U.S. Agricultural Trade," be included in the record at this point.

[The following was received for the record:]

POSSIBLE EFFECTS OF INCREASED CANAL TOLL FEES AND RESTRICTED ACCESS TO THE PANAMA CANAL ON U.S. AGRICULTURAL TRADE

(By Janice E. Baker)

This report was prepared in response to a Congressional request for analysis of and comments on the general effect of increased Panama Canal tolls on U.S. farm trade, and for comments on the statistical tables appearing in "The Panama Canal and U.S. Farm Trade," Foreign Agriculture, October 17, 1977.

IMPORTANCE OF THE PANAMA CANAL

The Panama Canal has been a major transportation route for U.S. farm exports and imports for many years. In 1976, approximately 20 percent of all U.S. agricultural exports, or about 20 million tons of commodities, travelled through the Canal. This figure included 45 percent of U.S. grain sorghum exports, 28 percent of U.S. soybean exports, and 18 percent of U.S. corn exports. Imports of fruits and other tropical products pass through the Canal on route to U.S. markets. Domestic produce, such as processed fruits and vegetables, moving from the U.S. West Coast to eastern markets also use the Canal.

The Canal is particularly important in U.S.-Asian trade. About 70 percent of U.S. farm products sent to Asian markets in 1976 travelled through the Canal. Corn, soybeans, wheat, and grain sorghum from the Midwest were shipped to Gulf ports and through the Canal to the Far East. Short staple cotton from Texas, Arkansas, and Louisiana followed the same route to Asian markets.

Japan, the largest single market for U.S. farm commodities, receives much of its imports by way of the Canal. In 1976 Japan received 12 million tons of U.S. corn, soybeans, and grain sorghum through the Canal. Korea and Taiwan each received 1.5 million tons of U.S. farm goods by the Canal route.

The second table in the Foreign Agriculture article, found on page 3, shows that the bulk of cargo moving through the Canal in 1975 was on route from the eastern United States to Asia. This shipping represented 39

percent of the total tonnage going through the Canal. The second most significant category in the table was shipping between Europe and the U.S. West Coast (7 percent of the total). Increases in Canal toll fees or loss of access to the Canal route could have had detrimental effects on shipping between those markets.

CANAL TOLL INCREASE

U.S. law requires that the Panama Canal Company be self-supporting through collection of Canal toll fees. The current toll is \$1.29 per Panama Canal ton, a measure equal to a volume of 100 cubic feet.

With or without ratification of the recently negotiated treaties, Canal toll rates are expected to rise in the near future, perhaps by as much as 30 percent. Using that figure, the new rate could be \$1.68 per Panama Canal ton.

Department of Agriculture officials have estimated that a 30 percent increase in the toll could add 5 percent to overall transportation costs for farm exports using the Canal. Although this increase could reduce the current price advantage of U.S. wheat over Canadian wheat, the U.S. soybeans over Brazilian soybeans, in Asian markets, the impact on the total volume of U.S. export sales should be minimal.

The third table in the Foreign Agriculture article, found on page 4, shows the major agricultural commodities moving through the

Canal in 1976. In the Atlantic/Pacific direction, the most important items in terms of tonnage were corn (42 percent of the total) and soybeans (23 percent). An increase in transportation costs for these commodities could make them somewhat less competitive with similar products from other nations. Because export sales of these products are major contributors to the positive side of the balance of trade, the United States has good reason to try to maintain the volume of feed-grain and soybean exports.

The table indicates that in the Pacific/Atlantic direction the most significant commodities shipped in 1976 were canned and refrigerated foods (33 percent) and sugar (25 percent). An increase in transportation costs for these commodities could be reflected in retail costs for these products in grocery stores in the eastern United States.

The fourth table in the Foreign Agriculture article, found on page 4, indicates actual and projected Canal traffic for selected products, 1975-1979. For fiscal year 1978 the largest projected users are coarse grains and soybeans, followed by lumber, sugar, and wheat. Most of the projected traffic in coarse grains, soybeans, and wheat reflects exports from Atlantic and Gulf ports to Asian markets. Increases in transportation costs could reduce the comparative advantage of these U.S. commodities.

RESTRICTED ACCESS TO THE CANAL

U.S. officials and traders are more concerned over restricted access to the Canal than over a toll increase. Certainly the effect of restricted access to the shorter shipping route would be more harmful to farm trade than a higher charge for use of the Canal.

The first table in the Foreign Agriculture article, found on page 2, indicates the comparative distances between selected ports by way of the Panama Canal and by way of Cape Horn at the southern tip of South America. The shipping distance between New Orleans and Yokohama, Japan, would increase by 7,456 nautical miles, an increase of 82 percent. Although the shipping time and cost might not increase by the same percentage, it is clear that the longer route would have an adverse effect on the price of U.S. products in Asian markets.

Secretary Bergland has indicated that closure of the Canal could add 20 days to the delivery time for U.S. grains and soybeans in Asian markets, and the route around Cape Horn could double transportation costs. Australia and Canada would probably take Asian wheat markets away from the United States, and Brazil could undersell U.S. soybeans. In the Far East the United States currently has a price advantage over Brazil in soybeans, but the Cape Horn route would put the U.S. commodity at a price disadvantage.

Restricted access to the Canal could also have an adverse impact in terms of domestic marketing. The shipping distance between San Francisco and New York, for example, would increase by 150 percent. The relative costs of ocean and overland transportation and the importance of time in transit would have to be considered by West Coast shippers supplying the eastern United States.

Development of an overland transportation network to move grains and processed foods between East and West in the United States would require substantial financial investment. Railroad, truck, storage and handling facilities are currently insufficient to absorb the bulk of farm commodities that now travel by ship through the Canal.

The Panama Canal And U.S. Trade

COMPARATIVE DISTANCES TO SELECTED PORTS VIA PANAMA CANAL (PC) AND STRAITS OF MAGELLAN (M)

(In nautical miles)

From—	Via	Sao Francisco	Seattle (Vancouver)	Cruzaguit	Callao	Valparaiso	Yokohama	Shanghai	Singapore
New York, N.Y.	Panama Canal	5,263	6,038	2,842	3,368	4,634	9,700	10,586	12,523
Hallifax, Nova Scotia	Straits of Magellan	13,122	13,898	10,241	9,605	8,365	16,709	16,761	16,619
Norfolk (Newport News, Va.)	Panama Canal	12,987	13,763	10,106	9,470	8,231	16,074	16,626	12,843
New Orleans, La.	Straits of Magellan	13,064	13,840	10,182	9,546	8,306	16,650	16,702	16,560
San Francisco, Calif.	Panama Canal	4,689	5,464	2,268	2,794	4,060	16,125	16,000	12,377
San Pedro de Macoris, P.R.	Straits of Magellan	13,495	14,271	10,614	9,978	8,739	16,582	17,134	11,949
Arica, Netherlands Indies	Panama Canal	3,922	4,697	1,501	2,027	3,293	8,359	9,243	11,182
Rio de Janeiro, Brazil	Straits of Magellan	12,066	12,782	9,125	8,489	7,250	15,093	15,645	11,822
Santiago, Chile	Panama Canal	8,826	9,601	5,545	6,171	7,432	12,093	12,917	11,971
Buenos Aires, Argentina	Straits of Magellan	8,674	9,449	5,253	6,779	8,040	11,510	12,434	11,971
		7,582	8,358	4,701	4,065	2,826	10,669	11,221	11,079

Not applicable.

Source: Panama Canal Company Board of Directors. "Report of Panel on Proposed Changes in Rates of Tolls for the Panama Canal," Sept. 13, 1976.

PANAMA CANAL CARGO MOVEMENT, BY PRINCIPAL TRADE ROUTES, 1966-75

(In thousands of long tons)

Item	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975
East Coast United States-Asia	25,912	29,742	34,691	39,486	48,397	49,535	40,086	50,051	56,935	55,402
Europe-West Coast United States-Panama	7,628	7,867	6,778	7,393	6,674	8,007	6,095	6,529	11,588	16,411
Europe-West Coast United States-South America	6,645	5,754	5,901	5,618	6,013	5,723	5,729	4,839	4,182	5,481
Europe-Asia	2,653	1,075	4,642	5,698	5,027	5,164	5,783	6,346	8,000	10,028
Europe-Oceania	2,255	2,184	2,752	2,659	2,854	3,397	2,938	3,307	3,588	3,590
U.S. Intercoastal (including Alaska and Hawaii)	1,570	2,309	2,311	2,030	2,070	2,033	2,334	2,747	2,947	4,386
U.S. Intercoastal (excluding Alaska and Hawaii)	2,692	1,996	2,160	2,257	2,700	3,106	2,744	2,916	4,462	7,934
East Coast United States-West Coast Central America/Mexico	2,796	1,031	1,216	1,192	1,143	1,577	1,626	1,717	2,170	1,859
East Coast United States-West Coast Central America/Mexico	2,816	3,163	3,498	3,995	4,454	3,320	3,812	3,306	4,598	4,675
South American Intercoastal	1,848	2,001	2,618	2,400	2,479	3,225	2,441	2,352	2,557	2,150
West Indies-Asia	3,269	3,101	3,101	3,101	3,101	3,101	3,101	3,101	3,101	3,101
East Coast United States-Asia	3,269	3,101	3,101	3,101	3,101	3,101	3,101	3,101	3,101	3,101
East Coast United States/Canada-Oceania	9,775	12,262	12,973	14,052	14,187	14,740	16,004	20,529	23,306	20,271
Total	81,704	86,193	96,550	101,373	114,257	116,627	109,234	126,104	147,907	140,101

Not applicable.

Source: "Panama Canal Company Board of Directors Report of Panel on Proposed Changes in Rates of Tolls for the Panama Canal," Sept. 13, 1976.

ACTUAL AND PROJECTED PANAMA CANAL TRAFFIC FOR SELECTED AGRICULTURAL AND RELATED PRODUCTS

[In thousands of long tons]

Commodity	Actual, fiscal year 1975 ¹			Fiscal year 1977 ²			Projected			Fiscal year 1979 ³		
	P-A ⁴	A-P ⁵	Total	P-A	A-P	Total	P-A	A-P	Total	P-A	A-P	Total
Wheat.....	291	4,422	4,713	475	3,630	4,105	300	3,940	4,240	300	4,195	4,495
Coarse grains.....	230	9,405	9,635	455	11,365	11,820	340	12,770	13,110	340	13,595	13,935
Bananas.....	1,682	1,389	3,071	1,665	950	2,615	1,710	1,000	2,710	1,760	1,050	2,810
Sugar.....	2,852	3,472	6,324	3,289	4,585	7,874	3,470	5,985	9,455	3,510	5,455	8,965
Soybeans.....	3,517	10	3,527	4,105	75	4,180	4,595	75	4,670	5,165	75	5,240
Lumber.....	2,625	695	3,320	1,975	630	2,605	2,520	725	3,245	3,045	620	3,665
Pulp, paper, and paper products.....	84	5,092	5,176	25	3,749	3,774	25	4,155	4,180	25	4,670	4,695
Phosphates.....	1,894	2,274	4,168	2,175	1,130	3,305	2,365	1,280	3,645	2,605	1,475	4,080
Potash, fishmeal, and fertilizers.....	1,683	409	2,092	1,680	332	2,012	1,675	310	1,985	1,685	257	1,942
Refrigerated foods.....	2,923	547	3,470	2,660	545	3,205	2,501	530	3,031	2,432	520	2,952
Other food.....	5,144	3,828	8,972	5,725	4,990	10,715	6,160	5,660	11,820	6,595	6,295	12,890
Miscellaneous cargo and containers.....												
Total traffic.....	56,009	84,092	140,101	52,875	74,478	127,353	55,600	78,467	134,067	58,449	81,719	140,168

¹ July-June.² October-September.

Source: Panama Canal Company Board of Directors: "Report of Panel on Proposed Changes in Rates of Tolls for the Panama Canal," Sept. 13, 1976.

³ P-A = Pacific to Atlantic; A-P = Atlantic to Pacific.

Mr. HANSEN. Mr. Chairman, it is imperative that Congress act early and decisively to control the finances regarding the Panama Canal treaties and put a stop to arbitrary and apparent illegal acts by agencies of Government.

The Department of Defense, for example, has acted in just such a manner, as I mentioned earlier, to implement portions of the Panama Canal Treaty of 1977, in absolute and direct defiance of the will of Congress.

As Representatives of the people, we must act immediately to protect U.S. taxpayers and halt this rape of the legislative and legal process. To cite the specific circumstances, I point out the fact that on October 7, 1978, Congressman John McFall, chairman of the House Subcommittee on Transportation Appropriations, refused a September 18, 1978 request by Governor H. R. Parfitt of the Canal Zone government for authorizations to spend Canal Company funds to prepare for the implementation of the Panama Canal treaties. Governor Parfitt accepted this congressional direction and has withheld further action, despite any inconvenience he may feel because of it.

However, just the opposite took place with the Army when President Carter arbitrarily certified, on October 3, 1978, that construction of certain projects in the amount of \$10.9 million is essential to the national interests of the United States to bolster an October 4 request by the Deputy Secretary of Defense, Charles W. Duncan, for approval by the Military Construction Authorizations Act to begin implementation of the Panama Canal Treaty.

It was just that blatant and bold, Mr. Chairman; that is what they said they were doing, congressional authorization or not, implementing the Panama Canal Treaty. And when Mr. Duncan appears before this committee, I would hope that he has the opportunity to tell why he defied the will of Congress and a congressional subcommittee chairman in going ahead with the spending of funds which he was not authorized to do.

On October 11, 1978, Congressman Gunn McKay, chairman of the Appropriations Military Construction Subcommittee, acting consistently with Congressman McFall, denied the DOD request to use funds for that purpose, saying, "I want the taxpayers representatives in Congress to tell me first whether they want it or not."

On November 8, 1978, 1 day after the general elections, Deputy Secretary of Defense, C. W. Duncan, Jr., released \$10.9 million to the Department of the Army for this treaty implementing construction in the Panama Canal Zone. The Army Corps of Engineers on November 13 awarded an apparently illegal noncompetitive sole-source contract to the J. A. Jones Construction Co. of 1 South Executive Park, Charlotte, N.C., at zip code 28231, contract number DACA 01-79-C-0016.

The corps did not advertise for bids from other construction firms. Instead, they shopped for sequential sole-source contracting and have certified that J. A. Jones was the only firm in the country capable of doing this general construction work. The Mobile Engineer District of the Army Corps of Engineers in Mobile, Ala. was the responsible authority for awarding the contract, under direction of the Offices of the Secretary of the Army and the Secretary of Defense.

Not only is such contracting without bid or available specifications, especially in light of the abundance of time elapsed since treaty approval, highly improper and apparently illegal, the Jones Construction Co. is in the further complicated position of currently being acquired for \$75 million in cash by the Holzmann construction firm of West Germany, according to the Wall Street Journal of October 23, 1978.

Let me remind you that the three primary projects to be accomplished by the funds released by DOD are construction of helicopter launch pads and Army command and intelligence headquarters at new locations within the Panama Canal Zone to satisfy anticipated conditions of a yet unimplemented treaty.

Although the DOD suggests expedience and haste, the history of the situation and the elapsed time which was available for legal and proper requests and processes clearly demonstrate irregularities which appear as an intentional rigging of the funding and contracting process—irregularities that demand investigation and immediate repair.

During the 95th Congress, many of you were among the co-sponsors of House Concurrent Resolution 347 which I was carrying around the House, which would have kept the proposed transfer of the Panama Canal under the watchful eye of the House in matters of appropriations and property disposal as outlined in articles I and IV of the Constitution.

The actions of the Defense Department follow a trend which is not merely disturbing, but which may be a symptom of a fatal disease to our representative republic, a disease where government can act beyond the will of the people with impunity.

This is not the only instance in which, by device and subterfuge, the executive branch, either directly or through its agencies, has thwarted and continues to set aside the statutory role of the Congress. This ominous trend of government by directive, which is of such concern to citizens and legal minds today, shows no signs of abating and probably will continue unless the Congress develops a backbone and chooses to act to put a stop to it.

This issue is quite simple, Mr. Chairman. Will we allow the executive agencies and unelected bureaucrats to run roughshod over congressional prerogatives and continue to defy the will of Congress and the people of the United States? America is watching; our prerogatives are at stake. We took an oath as Members of Congress to uphold the Constitution and we should act accordingly.

Therefore, on Thursday, February 8, 1979, I introduced H.R. 1958, a bill to protect the interests and express wishes of the taxpayers of this Nation as espoused by the U.S. Senate in its ratification of the Panama Canal Treaty of 1977; to insure domestic harmony; to assist the U.S. Treasury in providing for a balanced Federal budget; to require that all funds used to implement the Panama Canal Treaty of 1977 be expended only with the express consent of the Congress of the United States; and to require that no territory or property of the United States in the Panama Canal Zone be transferred to the Republic of Panama unless the Congress hereafter enacts legislation which expressly authorizes such transfer.

The cost to implement the Panama Canal Treaty promises to be staggering if we do not act immediately to protect ourselves. Millions of dollars have been given to Panama already. The \$11 million that the Defense Department stole from U.S. taxpayers is only the beginning of untold tens of millions of dollars to follow.

It is vital that all proposed implementation specifications and appropriations be handled under one omnibus bill in order to, once and for all, announce to all of America what price we are supposed to pay to give away the Panama Canal.

I would like to reiterate my opposition to the proposed administration implementing legislation. I find this legislation deceptive and vague in nature and definitely lacking in safeguards and guarantees to the American people.

The chairman's proposal is much more responsible, in that Congress retains control of the process, which I applaud. However, my bill provides the necessary safeguards to the Treasury and taxpayer of the United States by making the Panama Canal operation self-supporting, as it has always been, whichever jurisdiction it might function under.

There has been no burden to the taxpayers in retaining the canal, so why should any proposal to transfer such a tremendous asset create a burden? The treaties are predicated on the fact that there would be no cost to the taxpayers, and statements to this effect are available from virtually every prime treaty supporter in the administration and in the Senate, as I have previously pointed out.

Mr. Chairman, I would like to just recap for a moment some of the things that I have said here before telling you briefly what the bill is about. In my legislation I am calling for a return of \$70 million of surplus funds from the Panama Canal budget to the U.S. Treasury, and the passage of legislation to prevent any use of U.S. taxpayer funds to implement the Panama Canal treaties.

The Panama Canal has always been self-supporting, and any proposal to transfer this huge asset should not come at the expense of American taxpayers. It is bad enough to give the canal away, but it is a crime to use hard earned taxpayers funds to pay them to take it.

Last year, in a business-as-usual request, the Congress was asked, as I mentioned before, to appropriate \$100 million in loans, grants, insurance, and aid to Panama. This year, the Congress will again be asked to appropriate many millions of dollars on numerous occasions to be used in the giveaway of the Panama Canal.

Every major Senate and administration advocate of the 1977 Panama Canal treaties, as I have mentioned, gave strong assurances that no taxpayer funds were necessary or would be used for treaty implementation. However, we are seeing huge sums of money being requested and even arbitrarily stolen by agencies acting to implement provisions of the treaties. Something has got to be done to stop the ripoff and insist that the assault on the already overburdened U.S. taxpayer is halted.

In February of last year, the administration finally admitted, as I mentioned, in a letter to every Senator, that there would be a \$600 million cost to the treaties in addition to the anticipated loans, guarantees, and other nondirect programs. This was reluc-

tantly acknowledged in the letter which I cited earlier from officials of the administration.

The appropriated funds and lost revenues added to the loans and guarantees promise a total assistance program to Panama of billions of dollars of U.S. tax funds. If we are going to spend such huge sums of money for something, Mr. Chairman, let charity begin at home. Let us stop the giveaway of hundreds of millions of dollars to Panama and put it into American schools, American social security, American veterans programs, American farms or American cities; better yet, let us let the taxpayer keep it and spend it for himself.

I condemn the administration proposal to discontinue annual interest payments to the U.S. Treasury from the Panama Canal Commission over the next 20 years. The administration has betrayed the American people and, in particular, Senator Howard Cannon, whose vote for the treaties last year was secured when the President agreed to allow Senator Cannon's amendment, which guaranteed continued interest payments to the Treasury to be added to the treaties.

My bill, Mr. Chairman, is designed to assure the integrity of these people—I am talking about the people who promoted the passage of the Panama Canal treaties—and their promises to American citizens that they would not have to pay for any transfer of the Panama Canal.

My bill, which is called "The Taxpayer Relief Amendments to the Panama Canal Legislation," contains the following points which I feel offer the necessary safeguards. In the interest of time, Mr. Chairman, I will paraphrase a few and, hopefully, the rest can be included for the record.

One is: All previous and future expenses incurred by the United States to implement the Panama Canal treaties of 1977 shall be treated as an expense of the Panama Canal Commission. The Commission shall make full reimbursement to the U.S. Treasury of all such expenses incurred.

Two: No payments of any amounts thereof to the Republic of Panama by the United States, as guaranteed by article XIII, paragraph 4, sections a through c and article III, paragraph 5 of the Panama Canal Treaty of 1977, will be paid out of the general or any other revenues of the U.S. Treasury.

Under point No. 3: No payments shall be made to the Republic of Panama or Panama Canal Commission, except from the separate account created in section VI of this bill. No general or any other revenues of the United States shall be deposited in said account.

Point No. 4: The present cash assets of the Panama Canal Company, as I mentioned before, will be immediately paid to the U.S. Treasury and applied to the Canal Company's outstanding debt to the people of the United States, which is some \$319 million at this stage.

[Whereupon, Mr. Murphy assumed the Chair.]

Mr. HANSEN. Point No. 5: The Panama Canal Commission is hereby directed to continue paying off its outstanding debt to the U.S. Treasury on an annual basis, the last payment to be made by December 1999. Such payment shall be included as an operating cost of the Panama Canal Commission.

Point No. 6: Section 203, subsection (g) of section 62 of title 2 of the Panama Canal Code is amended to read as follows:

The Panama Canal Commission shall pay all canal operating revenues into a separate account in the Treasury of the United States and shall, only when expressly authorized by act of Congress on an annual basis, pay to the Republic of Panama those payments required under paragraph 4 of article XIII of the Panama Canal Treaty of 1977.

Point No. 7: A new section 214: The General Accounting Office shall monitor all costs incurred by the Panama Canal Commission. It shall determine the reasonable costs that would have been incurred by the Commission, had it continued to operate as the Panama Canal Company under U.S. direction.

The General Accounting Office shall determine the difference in cost to the American taxpayer between annual payments to Panama under this legislation and those annual payments that would have occurred under the previously existing system of operation and report on such differences to the Congress not later than 30 days after the end of each fiscal year. Such costs shall include operating cost increases, as well as increased cost to consumers in all goods due to increases in canal tolls.

Point No. 8: No funds of the United States, whether appropriated or nonappropriated, including any funds under the control of any department, agency, or other instrumentality of the United States, including the Panama Canal Company and Canal Zone Government, may be used to implement the Panama Canal Treaty of 1977 in any way, either directly or indirectly, or to take any action in preparation for such implementation, unless the use of such funds for that purpose have been expressly authorized in an appropriation act enacted by the Congress after the enactment of this act.

Point No. 9: No right, title, or interest in the United States, or any other department, agency, or other instrumentality of the United States, including the Panama Canal Company and the Canal Zone Government, with respect to any real property or improvements therein in the Canal Zone may, in any way, be transferred, whether by conveyance, relinquishment of control, or any other means, to the Republic of Panama, pursuant to the Panama Canal Treaty of 1977, unless such transfer is expressly authorized by an act of Congress enacted after enactment of this act.

Number 10: The prohibitions included in this act shall apply, notwithstanding any other provisions of law, including: (1) Any provisions authorizing the transfer of funds for contingency purposes or waivers of prohibitions; (2) any provisions authorizing transfers or conveyances of property or property interests of the United States; and (3) any provision of the Panama Canal Treaty of 1977 which might be construed to authorize, require, or otherwise provide for the obligation or expenditure of funds or the transfer of property.

Point 11: Notwithstanding the provisions of the Panama Canal Treaty of 1977, the Panama Canal Company and Canal Zone Government, under the Canal Zone Code of 1977, shall not cease to exist and shall not cease operations with respect to the Panama Canal and the Canal Zone except pursuant to an act of Congress.

Mr. Chairman, I believe that my bill, H.R. 1958, contains the means to properly protect U.S. interests, and I strongly urge that the committee adopt these provisions. Such legislation does not seek to deny anything to the Republic of Panama nor to interfere with basic treaty provisions. It merely provides for the protection of the American taxpayer through annual consideration and continued congressional oversight of the canal.

Mr. Chairman, this bill, H.R. 1958, has been referred to this committee. I was given some assurance in previous conversations with officials from the committee that the only reason this was not on the list of bills being considered at this time was because it had not been printed up and was not available. I request that this legislation be considered along with other pending legislation before this subcommittee.

The CHAIRMAN. Thank you, Congressman Hansen, for a very detailed and researched statement.

If the implementing legislation, either H.R. 111 or H.R. 1716, were enacted as introduced, would this satisfy your goal that all actions to implement the treaty have been given congressional authorization?

Mr. HANSEN. I think that if the Congress fully acts to approve legislation, there is not much you can complain about, whichever way it goes, Mr. Chairman. I do feel that, certainly, we should make sure that all of the provisions and prerogatives of the Congress, as outlined in the Constitution, are covered in this legislation. I think this is the responsibility of the subcommittee, the committee, and the rest of us as Congressmen to see that this is done.

The CHAIRMAN. You represent a constituency that may have a more direct interest in the canal because of the agricultural produce from your area that transits the canal. You have also taken a very strong stand on behalf of the taxpayer at large in this country to the effect that they should not have to pick up the costs of the treaty.

In light of these concerns, how do you view the tolls formula in H.R. 111 and 1716? Do you think the formula should be stringent or, for example, should it exclude defense costs as it now does?

Mr. HANSEN. Mr. Chairman, I feel that basic defense costs such as always have been shouldered by the Defense Department are one thing, but where there are realignment costs involved because of needs to satisfy conditions of the treaties, these costs should be applied to the income of the Panama Canal from tolls and whatever other sources before any distribution of funds is made.

I feel this is a cost pursuant to the terms of the treaty, and thereby should be handled as a treaty cost.

The CHAIRMAN. Mr. Bonior?

Mr. BONIOR. No questions.

The CHAIRMAN. Mr. Treen?

Mr. TREEN. Thank you, Mr. Chairman. I want to express my appreciation to the leadership of our colleague who has taken a great deal of interest in this and has spent an enormous amount of time in the interest of alerting the American people to the implications of the Panama Canal Treaty.

George, I want to thank you for the time you have taken. I co-sponsored a number of your resolutions seeking a role for the House of Representatives in the actual ratification process, because I felt, as do many in this committee and in the Congress, that we had a constitutional role in the House of Representatives through the provisions that you have often cited.

We are now faced with implementing legislation and I have a concern, somewhat parochial but not entirely so, with respect to where the tolls are going to go. Approximately 20 percent of the cargo into the gulf ports—and that is primarily the port of New Orleans—transits the Panama Canal, and I am very apprehensive about where the tolls are going to go.

I am interested in legislation that would give us a handle on that. I do not know what we can do after the year 2000, frankly, and I am concerned about that; that is only 21 years from now. But between now and the end of the century, which is the period that this legislation will apply to, I am interested in making sure that the Panamanians or other interests that may be contrary to ours, do not run these tolls up in various ways and use the Panama Canal to finance the operations of the Republic of Panama.

Now, a number of your proposals—before I ask that, let me get clarification. You have cosponsored H.R. 454; is that correct?

Mr. HANSEN. Yes.

Mr. TREEN. But you are asking the committee to consider H.R. 1958?

Mr. HANSEN. That is correct.

Mr. TREEN. That is a new bill introduced in this Congress to supplant 454?

Mr. HANSEN. I feel, Mr. Treen, that many of the conditions covered in 454 are also covered in the new legislation, but anything that would be useful and helpful in protecting the taxpayers and consumers of the United States in either bill, I would hope would be considered and adopted by this committee, in its wisdom, in coming out with some kind of legislation.

Mr. TREEN. I understand that, but you are primarily pushing 1958 now, rather than 454?

Mr. HANSEN. That is correct.

Mr. TREEN. Your description of your various points, beginning on page 10 of your statement, that is a description of items in this new bill, H.R. 1958?

Mr. HANSEN. That is correct.

Mr. TREEN. Let me ask you about the impact of several of your provisions. With respect to tolls, your item I, that all previous and future expenses incurred by the United States to implement the treaties shall be treated as an expense of the Panama Canal Commission—that will go into the accounting to determine what the tolls would be?

Mr. HANSEN. That is correct. I might add that I have been concerned about the problem of tolls and what it can mean to consumers in this country and trade factors, and so forth, which I think the gentleman is alluding to. And I can say this: First, on a business basis where you only can get as much as the traffic will bear, the tolls can only be so high, or you will not have any business.

So I think that there is a built-in limitation as far as international trade is concerned that is going to regulate the height of the tolls. I think that the administration has already assured us that there would be a 25 to 35 percent raise in tolls, anyway.

Mr. TREEN. If I can interrupt you so you can address all these points, you have also got in point V that, "The Panama Canal Commission is hereby directed to continue paying off its outstanding debt to the U.S. Treasury on an annual basis. Such payment shall be included as an operating cost of the Panama Canal Commission."

If we are going to consider a point such as that, we have got to know, it seems to me, what this is going to do, not in vague terms but in specific terms, with respect to tolls. As I say, I am concerned about the port of New Orleans, but I am also concerned about the impact of trade, generally, on this country.

So I have to express to you some very grave concern about your attempt all the way through your proposals to recover for the taxpayers in general the various costs—the costs that have been incurred such as old debt, and so forth.

So I wish you would address those cost-escalating factors in your proposal, and also let me know the impact of your point IV, that the present cash assets of the Panama Canal Company will be paid to the U.S. Treasury and applied to the Canal Company's outstanding debt to the people of the United States.

I assume that by reducing the outstanding debt, then, of course, that would have the effect of lowering the cost factors that would go into the tolls. But we have got to know clearly what this is going to mean in terms of tolls.

I am not suggesting that you should have at this point, but have you worked out, even on a percentage basis, what this will mean in terms of increased tolls?

[Whereupon, Mr. Hubbard resumed the Chair.]

Mr. HANSEN. Mr. Treen, I think you have posed good questions. We have thought of them or I would not have dared to put this legislation in. I feel that we, of course, have to address the taxpayer of the country, who is so frustrated that he is passing proposition 13's, and everything else, to get relief.

If we are going to represent the people of this country, we had better think about the tax problems and how much burden we are imposing on people. Now, if we can do that and still not damage ourselves as consumers, which is the other pocket we are talking about, this is how it should be done.

If we are really looking for a legitimate way to attack this problem, I think that this legislation does it, and I will tell you why. First, it takes care of the taxpayer. Now, to address the consumer problem, I can tell you that the only reason we have a \$70 million surplus, and it was accumulated in very short order, in the Panama Canal surplus fund is because of the toll structure that exists right now; so, already, we are accumulating a surplus.

If you apply this to the \$319 million, or whatever the outstanding debt is at this point, you reduce it down to just something over \$200 million. If you divide that by the 20 years that we are talking about, you are not talking about anything substantially different

than the \$20 million a year that they are required to pay now in interest payments when applied to an amortized principal.

The point we are talking about is not really to change the operation much from where it is, which is not restrictive of trade as you are concerned about or imposing prohibitive prices on the merchandise.

The point is that it has been an efficient operation and a self-supporting operation for the United States, and it certainly should continue to be when we transfer it. We are not doing any favor to the Republic of Panama or to ourselves in the long run if we transfer a deficit operation to them because we have set up some kind of a faulty payment program that allows them to run a less than efficient operation and get the difference out of the U.S. taxpayers.

Mr. TREEN. Let me ask you this, because you are an expert having studied these treaties: Is there any way to craft legislation here that would maintain a different toll structure for cargo originating in the United States and transiting the canal, or transiting the canal and coming to a U.S. port; a different cost structure for that trade, and that which simply transits the canal, neither originating or destined to the United States?

I have no idea how much cargo we are talking about in either category. But, in your opinion, is it possible to do that and not do violence to the treaty? In other words, if we can shift a lot of the operating costs to other users of the canal without affecting our trade, then that is something I think we should look to.

Mr. HANSEN. I think that would have to be studied legally under the terms of the new treaties as passed. But I would think that under the old conditions that, if we wanted to change the procedure or the rules, it is within the power of the Congress to do so. If we wanted to give ourselves most-favored-nation treatment, I suppose there is not anything that says that the Congress could not do this.

Mr. TREEN. George, I think my time is about expired. Thank you.

Mr. HUBBARD. Thank you, Congressman; your time has expired. Are there any other questions from any members of the subcommittee?

Mr. CARNEY. Yes.

Mr. HUBBARD. Excuse me; you have not even been called on yet. Congressman Carney?

Mr. CARNEY. I would like to yield my time to Congressman Treen.

Mr. BONIOR. Will the gentleman yield?

Mr. TREEN. Yes; I would be glad to yield.

Mr. BONIOR. The question you posed to Congressman Hansen with respect to tolls in terms of paying off U.S. debt, you seemed to conclude from that that by paying off the debt, that would help the toll structure in your situation in New Orleans. Can you explain to me why? I do not understand the process.

Mr. TREEN. I am sorry; I did not know at the outset that you were directing the question to me. Point IV of Mr. Hansen's testimony involved turning over present cash assets of the Panama Canal Company to the U.S. Treasury. I do not know what all the implications of that are, but one of those, according to Mr. Hansen,

would be to reduce the outstanding debt to the people of the United States.

In another part of his testimony, he wants to add, I believe, to the operating costs the retirement of that debt, amortized over a period of time. So, presumably, if you reduce that debt, through his point IV, you would have less debt to amortize, and therefore the operating costs would be less.

Mr. HUBBARD. Are there any other questions now?

The CHAIRMAN. Would the gentleman yield?

Mr. TREEN. It is Mr. Carney's time.

Mr. CARNEY. Yes; I will yield.

The CHAIRMAN. The gentleman brings up a very important point. One of the differences between 111 and 1716 is an interest payment in the area of \$20 million; 111 retains the interest payment to the U.S. Government. Of course, 1716 just drops it, and that is one of the issues that this subcommittee is going to have to face.

Mr. TREEN. Would the chairman yield?

The CHAIRMAN. It is not my time.

Mr. TREEN. I asked Mr. Carney to yield because I wanted to ask just one question, and he can give me a quick answer on it.

The Commission is made up of nine members, four of whom will be Panamanians nominated by the Panamanians, appointed by the President and, under legislation that many of us support, Senate confirmation will be required. There will be five U.S. members.

What do you think about the requirement that the five U.S. members have to vote en bloc? In other words, among the five U.S. members, if three favored a particular course of action, that would bind the five. What I am looking to is having one of the five U.S. members split off from time to time and go with the block of four from Panama, making decisions that might be adverse. I just wanted your reaction to that idea of requiring that the votes of the U.S. members be cast en bloc. I am sure the State Department will not approve this, but I just wanted your quick reaction.

Mr. HANSEN. Well, I would think it would be an additional safeguard for the United States. I think it would be both beneficial and necessary.

I might mention that on the \$20 million that the chairman mentioned as well as yourself, Mr. Treen, I think the Canal Company figures regarding implementation costs already include the \$20 million as one of the costs that was programed in.

So what I am proposing here really does not substantially add any increase, because it is already there.

Mr. HUBBARD. Does any other member have any questions for Congressman Hansen?

[No response.]

Mr. HUBBARD. In your statement, you asked that a report be entered into the record. There was no objection; it is so ordered.

[The information was previously included in the record.]

Mr. HUBBARD. Thank you, Congressman Hansen.

Mr. BAUMAN. Mr. Chairman, may I just add a word of thanks to the gentleman from Idaho? I unfortunately had to go take care of my district in another committee for a few minutes. He certainly has been an outstanding leader in this battle, and I think that without the research done by him and his staff and the issues that

he has presented to us, both on the floor and in this committee, we would not have been able to make as intelligent a judgment as, hopefully, we will, eventually.

He has eliminated a lot of the intricacies of this treaty that others have glossed over, and I think all of us owe him a debt. I certainly want to say my thanks to him for that.

Mr. HUBBARD. Again, thank you, Congressman Hansen.

Mr. HANSEN. May I, Mr. Chairman, make one request upon leaving?

Mr. HUBBARD. Yes.

Mr. HANSEN. My colleague, Congressman Steve Symms, had planned to be here and was here a little earlier, but he had a conflicting obligation; I do not think he is here at this time. He asked that his testimony be inserted into the record at this point, and I would hope this request might be granted.

Mr. HUBBARD. Certainly; without objection, it is so ordered. Indeed, Congressman Symms was here; we did see him, as you did. We appreciate his presence and his statement.

[The statement of the witness is included in the oral testimony of the witness at a later point.]

Mr. HUBBARD. As I call for Congressman Larry McDonald to come forward to be the next and final Congressman to testify before us today, let me mention that every Member of the House of Representatives was sent a letter by me, as chairman of this subcommittee, inviting him to testify here today before our subcommittee and to present his views regarding implementing legislation regarding the Panama Canal Treaty.

I emphasize that every Member of the House of Representatives was given a chance and was invited to testify today. Those who are strong proponents of the treaty do not have a representative to testify before us, but those who are concerned about this implementing legislation regarding the treaties are here, and I think that includes Congressman Larry McDonald. But, I did want to emphasize that every Member of the House was invited to testify today.

We appreciate your being here, Congressman Larry McDonald of Georgia. We are aware of the great interest you have exhibited in canal matters, including the many articles you have placed in the Congressional Record, and we welcome you here today and are most interested in your comments.

Mr. BONIOR. Mr. Chairman, I hesitate to interrupt, but I have a question that perhaps you can help me with. Can we have the staff, are there any plans to have the staff go through the detailed subject areas of both of these bills that we are considering, to outline the intricacies of them, because I think we have got some very complicated issues here?

I think it would be helpful for those of us on the committee who want to participate in the debate to deal with those and to relate those to the witnesses that come before us. Can the chairman give me an idea of how we propose to go on with the hearing process; who is scheduled, for instance, throughout this week, and the staff, indeed, will speak to these issues?

Mr. HUBBARD. Thank you, Congressman Bonior. I have been very impressed, as the new chairman of this particular Subcommittee

on the Panama Canal, by the staff of this subcommittee; they are very sharp. They worked all day Sunday and Sunday night to try to get ready for these hearings this week and to try to cooperate with the leadership in its goal of having legislation finalized by April 10.

Your question is a good one and, indeed, I will ask the efficient and hard-working Terry Modglin, the staff director, to remember the request of Congressman Bonior, and please try to comply so that we can have side-by-side analyses of the legislation that is being introduced regarding the treaties, including the administration's bill, the bill introduced by Congressman Murphy and me, and the bill introduced by Congressman Hansen, and other bills that might be introduced.

Does that satisfy the Member?

Mr. BONIOR. Thank you.

Mr. BAUMAN. Mr. Chairman, I was under the impression that such an analysis had already been done and is now at the printers and may be available within the next 24 to 48 hours so that we will not be at a disadvantage.

Mr. HUBBARD. A side-by-side layout of the bill has been ordered; the ranking minority member is correct. It is just not before us today. I knew, as I made these comments, that the staff would see to that; in fact, they are already ahead of us. Thank you again, to Terry Modglin and the staff.

Now, Congressman Larry McDonald.

STATEMENT OF HON. LAWRENCE P. McDONALD, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF GEORGIA

Mr. McDONALD. Thank you very much, Mr. Chairman. It is a pleasure to be here this morning. I appreciate the opportunity of appearing before the subcommittee. I certainly was greatly impressed by the remarks of the full committee chairman, the gentleman from New York, Mr. Murphy. I think Mr. Murphy has been a very excellent scholar on this whole subject and, indeed, is most knowledgeable regarding recent events in Central America.

I personally deplore the administration's stand in Central America and, most particularly Nicaragua. I find that stand not only despicable, but very dangerous to the stability of Central America, which, once again, brings us to the issue before us today, trying to gain a stable atmosphere for the operation of the Panama Canal.

I appreciate the opportunity to appear here today and speak in opposition to H.R. 1716, the Carter administration-sponsored measure for implementation of the Panama Canal treaties. My views on the matter have not changed. The House of Representatives was bypassed by President Carter in not asking the House for concurrence in disposal of U.S. property, under article IV, section 3 of the Constitution.

The court decision on this case was purely political, I felt. I briefly reviewed H.R. 1716 and Congressman Murphy's bill, H.R. 111, and find that it, referring to H.R. 111, is much the preferable piece of legislation to bring to the floor. At that time, I had not reviewed Congressman Hansen's bill, H.R. 1958.

I will only comment on the matters suggested in paragraph 2 of your letter, Mr. Chairman. The years between now and the end of

the century may be the most dangerous period the United States has ever faced, and Mr. Murphy's bill will maintain U.S. interests in the best manner possible.

To cite just a few examples, H.R. 111, in section 102, establishes a supervisory board over the Panama Canal Commission, under the direction of the Secretary of Defense. Section 108 provides for the control of our armed services in time of war or threatened war. Section 109 clearly keeps the U.S. Ambassador to the Republic of Panama out of canal business. These are excellent sections; I just wish they had gone beyond the year 2000.

Sections 1601, 1602, and 1603 clearly do justice to American citizens, particularly veterans who have been buried in the Canal Zone; the administration bill does not.

Turning to specifics of the administration bill, H.R. 1716, I will just cite a few of the bad things, under the cognizance of you gentlemen. Section 106; in reference to that, my strong feeling is that it ought to be spelled out that all original documents are the property of the United States and shall be retained by the United States. Such copies as are needed can be made available to the Republic of Panama.

In chapter 2, "Tolls," section 411 and section 231, my strong feeling is that the time period to change the tolls should be changed to a minimum of 6 months' notice, instead of the 3 months which are proposed. We have very few friends left in Latin America, and the first big toll increase will probably cost us the few we have left.

Another general item is the fact that we are starting to turn over facilities to the Panamanians. In order to keep certain military people, and others, in place, we are having to reconstruct these same facilities elsewhere in the Canal Zone. In my view, it is bad enough that we are paying the Panamanians to take the canal, but the real scandal is that we are giving them buildings and facilities and then having to build them elsewhere at taxpayer expense. This ought to change; the Panamanians ought to pay for these buildings.

I wish this committee would take a stand on that matter, and I will try to see that it is changed when the House Armed Services Committee considers such legislation.

Having said the foregoing, I do not believe that I will support either measure when it comes to the House floor, because the whole transaction was wrong, and is wrong, in the first place. I feel it is only justice that I support the majority of the people who still oppose these treaties. Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman McDonald, for your statement.

Chairman Murphy, do you have a question for Congressman McDonald?

The CHAIRMAN. No, but I would like to point out that Congressman McDonald is very knowledgeable about the area. He has personally traveled to the area over several Congresses, and is certainly a student and very aware of the difficulties the United States faces on an area basis. The Panama Canal is one of the vital foreign policy issues that the country has had to face in the past decade and a half. We appreciate your testimony.

Mr. McDONALD. Thank you, Mr. Chairman.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. I also want to compliment the gentleman. Though I have not discussed this beforehand—and I might have more properly suggested that he cover this—the gentleman from Georgia has taken up where the House Internal Security Committee left off some years ago, in many respects. We owe him a debt for that because of the matters that he enters into the record that a great many of us would otherwise not have full knowledge about.

I wonder if you could give us any characterization of the present political arrangement in Panama, because looking over our list of witnesses, I do not expect that we are going to have anyone who might give us, shall we say, your viewpoint; certainly not from administration witnesses.

We know that a new president has been instituted, but I personally do not feel that that has made any fundamental change. Could you give us a brief description of your view of it, having studied it?

Mr. McDONALD. My view on the political situation in Panama is that it is truly not changed. It is not a republic in the sense of a government of law, nor is it a government of the people, but it is just simply a continuation of the strong man rule of the dictator, Torrijos, who took power at the point of a gun and shredded their constitution at that time.

Certain cosmetic changes have been made, but the concept of individual liberties and the concern, as a partner in Western civilization, to reduce or to eliminate outside dangerous influences to the hemisphere have not been shown by the Torrijos regime and the current group in Panama.

Mr. BAUMAN. Do you have any question that he is still effectively in control?

Mr. McDONALD. No, I do not think there is any question about that. I think that while there has been some cosmetic overlay, it is very clear, in my opinion, that the Torrijos group maintains control.

Mr. BAUMAN. Thank you.

Mr. HUBBARD. Questions from Congressman Bonior?

Mr. BONIOR. No.

Mr. HUBBARD. Questions from Congressman Treen?

Mr. TREEN. Just one question, Mr. Chairman. Do you have any comments, Mr. McDonald, about how we can resolve the conflicting objectives of trying to make sure that the taxpayers of this country are properly treated, and also the objective of trying to keep tolls at a reasonable level? Have you any comments about that?

Mr. McDONALD. None specifically, Mr. Treen. I think it is going to be truly a Gordian knot that may not be untied. This is one of the problems you get into when you start bypassing the law; the law of the country is the Constitution, as we all know.

I think the administration, in order to gain an expedient move—that is to say, to gain a particular treaty that certain interests in the administration felt was imperative—when you bypass fundamental law, you start creating more problems, and I think we are in that problem phase. We may kid ourselves that we are going to gain some solution. I think there is a very good chance that while we may debate the issue, the totalitarian forces may very well seize

the canal, under one pretext or another, a long time before the year 2000.

Like other areas of the world, freedom will be diminished; I think this is one of the great tragedies. When this issue was not brought before the House of Representatives for full debate, the law of the land was bypassed at that time, and now we are left in the position of trying to straighten out or trying to make something fairly good out of a bad situation.

I do not want to be pessimistic, but in terms of working out tolls, I do not have a formula.

Mr. TREEN. Well, I agree with the general thrust of what you are saying. I think that problems such as this that we now have to come to grips with in this committee and in the Congress—there was not sufficient focus on that with the American people.

People such as you, of course, tried to bring these points to the attention of the American public. I want to thank you for the role you played in this all along, in helping to try to bring as many of these problems to the attention of the American public as possible. Thank you.

Mr. McDONALD. Thank you, Mr. Treen.

Mr. HUBBARD. Questions from Congressman Bill Carney?

Mr. CARNEY. No.

Mr. HUBBARD. Questions from Congressman Bob Dornan?

Mr. DORNAN. Congressman McDonald, I wonder if you have any observations on what is happening in the Middle East? Iran was a nation that we thought was one of the most stable friends that we have, where we were selling them supersecret Boeing Awacs aircraft, 77 F-14 Tomcats—we do not know what has happened to them yet—secret listening devices that were supposed to be able to handle the incrypting of all the Soviet telemetry, a shopping list including F-16's and F-15's, and even the F-18L version of the Northrop new Navy fighter.

If things could fall apart so quickly there—our sixth American Ambassador has been murdered in the adjoining country of Afghanistan—if all of this can happen in a supposedly top-secret, safe environment, what can happen to this strategic area of the canal, given a country that insulted us over the last year under General Torrijos and given the potential for instability in that area?

How do you think the events in the Middle East should impact upon our debate on what we have just done with the Panama Canal?

Mr. McDONALD. The gentleman's question might, to some, appear to be unrelated, but he brings up an excellent point. I think, in short, our policy has been, for 40 years, a policy of retreat from greatness; I do not think there is any question about it.

The vacillations in Iran in that troubled area are just symptomatic of a disease that has been with us; we are simply unwilling to stand for the principles that made this country great. That is not demagoguery; that is a very clear statement of fact.

If we are not able to pull the chestnuts out of the fire in a place like Iran where they do have F-14's with extremely sensitive material and they do have Phoenix missiles, which is an extremely sensitive item that we were willing to take great lengths to pull up off the ocean floor when one of them plopped in the ocean off the

north of England, then how in the world do you think we are going to be able to—if we are unable to handle that in Iran, where we had such heavy vested interests and all these guarantees, what stand would we take when things maybe start getting tight in Panama, 12 or 18 months from now, or 2 years?

Based upon what we have seen coming up out of the State Department policy advisers and from the administration—and not just this administration, but past administrations, as well—I do not think it is a very good omen. I think it means that all this lofty debate that we are doing now on the tolls, and so forth, may be just a footnote in history—the fact that a subcommittee debated an issue that really became moot. It is a very grave point of concern.

With respect to Iran, specifically, I think that so much of the unrest in Iran comes directly as a result of U.S. policy, going back to the Kennedy administration where we made demands on the internal policy to break up the landed estates, which directly impacted upon the church in Iran, and they have a very close church-state relationship.

The Justice Department in this country repeatedly, year after year, failed to enforce the law of this country by failing to arrest and prosecute violators of demonstrating with masks, which is a violation of Federal law. It is no big secret. I wrote the Justice Department at least three letters, saying “Here comes a demonstration; it will be with masks; why are you not enforcing the law?”

Two months later, I would get a long, lengthy letter of garbage in return that did not address the point of the original letter, and so that went on. The so-called human rights policy aided to destabilize. I personally think that the Khomeini government is going to be very short term. He will probably go down not only as a madman and a fanatic, but one of the greatest fools of history, because he has been very cleverly used, and he will be a transition, I am very fearful, into a Soviet satellite.

But in the process, the Phoenix missiles, the F-14's, and the others, are placed in jeopardy and, in some cases, lost.

Mr. DORNAN. We have some of the same secret-type equipment in the Panama Canal Zone for monitoring our nuclear submarines—that came out in the hearings last year; that was top secret until it did come out—the operations we had along the Iranian border.

I tried to determine, as a member of this subcommittee last year, exactly what our security arrangements were; if the Panama Canal Treaty, which only won by two votes, had gone the other direction, what the orders were to our soldiers?

I know the President had told me in the White House, in a group of 30, or so, Congressmen, that he was prepared to send 100,000 troops down there to secure the zone. But with the recent experience of the last 2 days, with our Marines in the American Embassy in Iran under various orders, using tear gas and deer-hunting rifles, whatever that means, and then playing it by ear and retreating to the second floor, and our helicopters not even allowed to land in Turkey but being held back hundreds and hundreds of miles away in the Azores, I no longer have any feeling of security

concerning any plan in Panama to enforce the treaty that we are talking about through New Years Eve of 1999.

I do not know what orders we have given down there, and I would not believe any that I saw now, as a matter of fact.

Mr. McDONALD. Well, I share the gentleman's concern and compliment him in his very active fight to not only awaken some Members of the House, but also the American public.

You know, when you look at the Taiwan issue, you look at the South Korean decision, you look at the Mideast, and you look at the Panama Canal, I think, whether we want to face it or not, we are in a period of retreat or decline—a retreat from greatness.

It need not necessarily be a final program, but it is certainly the program we have had for at least three decades. The question is, Would we stand firm? I doubt it. I agree with you; I have no confidence that we would.

Mr. DORNAN. Well, then you believe, in this implementing legislation, in addition to all the monetary aspects, we should take a long, hard look at every single security aspect of how we intend to enforce, and demand respect for, whatever treaty we have come up with that is supposed to exist through 1999, and then to make sure that it is crystal clear, in black and white print, on what we intend to do beyond the year 2000 to secure this strategic waterway.

Mr. McDONALD. I would hope we would be able to do that, Mr. Dornan, and I would certainly support every effort toward that end. The problem we face, however, is that we have administration after administration, and a bipartisan foreign policy that has gone on in administration after administration, that simply, apparently, is oblivious to that need.

The gentleman's point of the very sensitive military equipment that was in the Canal Zone—you know, it just boggles the mind that when you look at the treaty that came forth to the American public, it apparently took none of that into account.

You just wonder what in the world they were doing down there. What was our man doing; was he sober? I mean, you really wonder. Is age a problem? Did he have a problem in his staff? Why is it that so many fundamental points were apparently just glossed over and they figured that time or the tooth fairy or Santa Claus would somehow "God Bless America" and we will not have to worry about it?

Mr. DORNAN. Well, I want to join my colleagues, and particularly Mr. Bauman, in complimenting you for the efforts that you have brought forth in the security areas. The very strategic problem that it seems all people of every political ideology worry about in this country is energy with 75 percent of the free world oil coming through the Straits of Hormuz in the Persian Gulf. While America's oil energy needs are just as concentrated for this Nation and for Canada, focused in on the Panama Canal and what we have to do to send west coast crude through there to refineries on the gulf and on the east coast—I think we had better lock these two debates together; that one is just as important as the other.

Mr. HUBBARD. Thank you very much, Congressman Dornan.

Any other questions of Congressman McDonald?

[No response.]

Mr. HUBBARD. Thank you, Larry.

Mr. McDONALD. Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you for being with us and for your statement.

Congressman Steve Symms of Idaho is here.

We had already received your statement into the record, but we would prefer, Steve, to have you give it to us in person. Indeed, the State of Idaho is well represented today.

STATEMENT OF HON. STEVEN D. SYMMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IDAHO

Mr. SYMMS. I will be very brief, Mr. Chairman; I know that the hour is late.

Mr. Chairman and members of the committee, first of all I would like to associate myself with the views expressed by Congressman Hansen and Congressman McDonald. They have both reviewed H.R. 1716 and H.R. 111 in some depth, but I would like to comment on the whole concept of the enabling legislation involved with this treaty.

I am basically opposed to any implementing legislation for the Panama Canal Treaty on constitutional grounds. The House of Representatives has been denied prior consideration of this treaty which provides for the disposition of U.S. property. Article IV, section 3, clause 2 of the Constitution clearly designates the House's involvement in this process.

The implementing legislation to appropriate funds for the transfer of U.S. Government property to Panama cannot be substituted for the approval of both Houses of Congress for the disposition of U.S. property. I feel that a separate vote in the House on these treaties is necessary.

Along with the constitutional problem, I think it is important when considering the implementing legislation to mention the fact that Panama has officially repudiated some of the key Senate changes in the treaties. I refer specifically to the DeConcini reservation which granted unilateral military action against any threat to the canal.

On June 5, 1978, Senator Jesse Helms of North Carolina stated on the floor of the U.S. Senate that this reservation was added to the treaty as a means of gaining additional support for ratification, and that Panama's refusal to accept this reservation "rejected the foundation upon which the treaty structure was built." My point is that we are considering implementing a treaty which is minus some provisions specifically called for by the Senate.

Another important aspect to consider when discussing the implementation of the Panama Canal Treaty is the overall change in the global strategic picture. I question whether the United States can afford to release control of this strategic choke point, as was just discussed by Congressman McDonald and Congressman Dornan, to a Government which is not necessarily disposed to the best interests of our Western Allies, as well as ourselves.

As the United States grows more dependent on foreign sources of oil and critical materials, the protection of our strategic lifelines becomes even more vital.

Finally, I must point out that there are some Americans living and working in the Panama Canal Zone who feel that the adminis-

tration's implementation legislation does not adequately protect their jobs. Jim O'Donnel, president of local 14 of the American Federation of Government Employees, is quoted in the Washington Post of January 6, 1979, as saying that the 850 workers he represents in the Canal Zone have been sold down the river by the legislation.

Consequently, I must oppose H.R. 1716, since I strongly opposed the ratification of the Panama Canal treaties. I must also oppose H.R. 111, since I do not favor implementing the treaties at this time. However, I would say that of the two bills being considered by the subcommittee, I would support H.R. 111 over H.R. 1716.

Thank you very much for giving me the opportunity to make my views known to the subcommittee.

Mr. HUBBARD. Thank you very much, Congressman Symms. As you know, I share your positions on the problems involved in the new treaties and appreciate your being with us. I would emphasize again, however, that each Member of the House of Representatives was requested to be here today to testify and give us their opinions regarding implementing legislation.

Congressman Bauman, do you have a question for Congressman Symms?

Mr. BAUMAN. Only to thank my good friend from Idaho for being here today and for an excellent statement.

Mr. HUBBARD. Congressman Bill Carney, any questions?

Mr. CARNEY. No.

Mr. HUBBARD. Congressman Bob Dornan, any questions?

Mr. DORNAN. Just a brief comment that it is an excellent statement, but it is only typical of everything that the Congressman from Idaho has been talking about.

Mr. SYMMS. Thank you, Mr. Dornan.

Mr. HUBBARD. Congressman, if you ever need a boost, just come back to our subcommittee.

Mr. SYMMS. All right. [Laughter.]

Mr. HUBBARD. I believe that concludes the list of those Members of the House of Representatives who indicated a desire to testify here today. Before I conclude the meeting, does any member of the subcommittee have any comment to make?

[No response.]

Mr. HUBBARD. We will meet again tomorrow at 9 a.m.—please remember that, members of the subcommittee—to hear testimony from people affiliated with the Department of Defense, the Department of Commerce, the Department of Transportation, and the State Department, not necessarily in that order; I believe the State Department witnesses, in fact, will lead off tomorrow.

We will begin at 9 a.m. The House does meet tomorrow at 11, and yet it is possible that we could conclude by 11. We will do the best we can, but let us try to be on time at 9 and get the hearing underway at that time. Thank you very much.

[The following statements were submitted for the record:]

INTRODUCTION TO THE STATEMENT OF HON. DANIEL J. FLOOD BY HON. JOHN M. MURPHY, CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES

As is well understood by the subcommittee, the interoceanic canal question is not new but traces back many years and has many facets.

Since 1955, one of the most outstanding leaders in the United States in clarifying this immensely complicated subject in and out of the Congress, by means of scholarly addresses and perceptive public statements, has been the Honorable Daniel J. Flood of Pennsylvania, a life long student of interoceanic canal history and problems. His initial interest was inspired in early youth during occasional visits by former President Theodore Roosevelt as a house guest in his grandfather's home in Hazelton, Pennsylvania. On those occasions, young Flood listened many hours to that great American leader discussing the difficulties he had experienced in launching the Panama Canal.

It is also of interest that Congressman Flood comes from an area long associated with canal history. For example, it was Benjamin A. Bidlack of Wilkes-Barre (1804-49) who, while serving as U.S. Minister in Bogotá, New Granada (now Colombia), in 1846, negotiated the first major canal treaty. That treaty contemplated the eventual construction of a "railroad or canal" across the isthmus of Panama and gave the United States valuable right in the use of that route.

It is, therefore, historically fitting that we have a prepared statement from Representative Flood whose long record of notable contributions toward increased understanding of the crucial issues involved and in bringing about policies derived from reasoned lines of thought are unique in the history of the United States (Ho. Doc. No. 474, 89th Congress, subsequent addresses by Representative Flood in the Congressional Record, and his statements before Congressional committees.)

It is regrettable that, because of hospitalization, Congressman Flood was unable to deliver his statement as originally planned.

STATEMENT OF HON. DANIEL J. FLOOD, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF PENNSYLVANIA

Mr. Chairman and Members of the Sub Committee on the Panama Canal:

As a member of the Congress who for over a quarter of a century has devoted much of his time and effort to the study of the problems of national defense, which include those of the Panama Canal, I welcome this opportunity to comment on the Isthmian question. Since there is little of fundamental character that experienced witnesses and myself have not already covered in extensive testimony before various committees of both the House and Senate my remarks will be brief.

At this point, Mr. Chairman, I request that the following documents be attached to my testimony:

1. A letter to the President by four former Chiefs of Naval Operations dated June 8, 1977, and its forwarding endorsement by four distinguished senators, both of which letters stress the importance of retaining full sovereign control over the Canal Zone.

2. A February 19, 1979, article by Dr. Donald M. Dozer, Professor Emeritus of Inter American Relations, University of California, Santa Barbara, and historian with a background of experience in the State Department, who emphasizes some of the Constitutional angles involved in the present situation.

As a foundation for what I shall say, I wish to emphasize the following crucial points:

1. That both the Canal Zone and Panama Canal, respectively, are territory and property of the United States, acquired, constructed, maintained, operated, sanitated, protected and governed pursuant to acts of the Congress;
2. That the U.S. Constitution vests the power to dispose of both territory and other property of the United States in the Congress and not in the President and the Senate;
3. That the negotiations for the 1977 treaties were undertaken on Executive initiative without Congressional authorization;
4. That both H.R. 111 and H.R. 1716, though different in certain respects, apparently accept the validity of the giveaway of what geographically is the most crucial strategic asset of the United States; and
5. Eminent authority on the U.S. Constitution, during recent hearings in the Senate, stressed that "any attempt of disposition of territory and other property of the United States without getting the concurrence of the Congress, including the House, would be void." (U.S. Senate Committee on the Judiciary, Sub Committee on Separation of Powers, Hearings on Disposition of United States Territory, Part 3, Nov. 3, 1977, pp 332-39.)

The solution of the interoceanic canal problem, which is both simple and relatively inexpensive, consists of two aspects:

First, retention by the United States of its undiluted sovereign control over the U.S. owned Canal Zone; and

Second, major modernization of the existing canal under existing treaty provisions.

Instead of reducing the size of the Canal Zone it ought to be extended to include the entire watershed of the Chagres River as was once recommended by a Commanding General of the U.S. Army on the Isthmus.

In spite of extensive misleading propaganda in support of the 1977 treaties, largely of State Department origin, the people of the United States see through its deceptions and are overwhelmingly opposed to the projected give away. It is highly significant that the possible loss of the Panama Canal through State Department sponsored treaties has focused national attention on the overall conduct of U.S. foreign policy to a far greater degree than any other issue within the period of my service in the Congress. Certainly, such cession of the Canal Zone to Panama could serve as a dangerous precedent for the future, even for the dismemberment of the United States.

The crucial question involved in the canal situation transcends the diplomatic relations between the United States and Panama or any of the problems of the Panama Canal. It is a matter of global geopolitical significance for surrender of the Canal Zone will ultimately lead to the loss of the Caribbean and the pro-Soviet Cubanization of Central America. This danger has been recently dramatized by violence in Nicaragua, which has had both Panamanian and Cuban support.

Thus, loss of the Canal Zone could amount to a major defeat in war that would require substantial military and naval actions by the United States to recover its strategic artery of marine transportation and to secure its approaches in both the Atlantic and Pacific Oceans.

Accordingly, Mr. Chairman, as remedial responses to the present challenge on the Isthmus, I urge the positive rejection of both H.R. 111 and H.R. 1716 and the prompt approval of H.R. 1958, introduced by Representative George V. Hansen with well informed members of the Congress as co-sponsors, and of H.R. 1930 for major canal modernization, introduced by Representatives John M. Murphy, Robert K. Dornan, George V. Hansen, and myself.

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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, D.C. 20510

June 15, 1977

The President
The White House
Washington D. C.

Dear Mr. President:

We are enclosing a most important letter from four former Chiefs of Naval Operations who give their combined judgement on the strategic value of the Panama Canal to the United States.

We think you will agree that these four men are among the greatest living naval strategists today, both in terms of experience and judgement. Their letter concludes:

"It is our considered individual and combined judgement that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty."

We concur in their judgement and trust you will find such action wholly consistent with our national interest and will act accordingly.

Sincerely,

Strom Thurmond
Strom Thurmond USS

Jesse Helms
Jesse Helms USS

John L. McClellan
John L. McClellan USS

Harry F. Byrd, Jr.
Harry F. Byrd, Jr. USS

June 8, 1977

The President
The White House
Washington, D. C.

Dear Mr. President:

As former Chiefs of Naval Operations, fleet commanders and Naval Advisers to previous Presidents, we believe we have an obligation to you and the nation to offer our combined judgment on the strategic value of the Panama Canal to the United States.

Contrary to what we read about the declining strategic and economic value of the Canal, the truth is that this inter-oceanic waterway is as important, if not more so, to the United States than ever. The Panama Canal enables the United States to transfer its naval forces and commercial units from ocean to ocean as the need arises. This capability is increasingly important now in view of the reduced size of the U.S. Atlantic and Pacific fleets.

We recognize that the Navy's largest aircraft carriers and some of the world's super-tankers are too wide to transit the Canal as it exists today. The super-tankers represent but a small percentage of the world's commercial fleets. From a strategic viewpoint, the Navy's largest carriers can be wisely positioned as pressures and tensions build in any kind of a short-range, limited situation. Meanwhile, the hundreds of combatants, from submarines to cruisers, can be funneled through the transit as can the vital fleet train needed to sustain the combatants. In the years ahead as carriers become smaller or as the Canal is modernized, this problem will no longer exist.

Our experience has been that as each crisis developed during our active service--World War II, Korea, Vietnam and the Cuban missile crisis--the value of the Canal was forcefully emphasized by emergency transits of our naval units and massive logistic support for the Armed Forces. The Canal provided operational flexibility and rapid mobility. In addition, there are the psychological advantages of this power potential. As Commander-in-Chief, you will find the ownership and sovereign control of the Canal indispensable during periods of tension and conflict.

As long as most of the world's combatant and commercial tonnage can transit through the Canal, it offers inestimable strategic advantages to the United States, giving us maximum strength at minimum cost. Moreover, sovereignty and jurisdiction over the Canal Zone and Canal offer the opportunity to use the waterway or to deny its use to others in wartime. This authority was especially helpful during World War II and also Vietnam. Under the control of a potential adversary, the Panama Canal would become an immediate crucial problem and prove a serious weakness in the over-all U.S. defense capability, with enormous potential consequences for evil.

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Mr. President, you have become our leader at a time when the adequacy of our naval capabilities is being seriously challenged. The existing maritime threat to us is compounded by the possibility that the Canal under Panamanian sovereignty could be neutralized or lost, depending on that government's relationship with other nations. We note that the present Panamanian government has close ties with the present Cuban government which in turn is closely tied to the Soviet Union. Loss of the Panama Canal, which would be a serious set-back in war, would contribute to the encirclement of the U.S. by hostile naval forces, and threaten our ability to survive.

For meeting the current situation, you have the well-known precedent of former distinguished Secretary of State (later Chief Justice) Charles Evans Hughes, who, when faced with a comparable situation in 1923, declared to the Panamanian government that it was an "absolute futility" for it "to expect any American administration, no matter what it was, any President or any Secretary of State, ever to surrender any part of (the) rights which the United States had acquired under the Treaty of 1903," (Ho, Doc. No. 474, 89th Congress, p. 154).

We recognize that a certain amount of social unrest is generated by the contrast in living standards between Zonians and Panamanians living nearby. Bilateral programs are recommended to upgrade Panamanian boundary areas. Canal modernization, once U.S. sovereignty is guaranteed, might benefit the entire Panamanian economy, and especially those areas near the U. S. Zone.

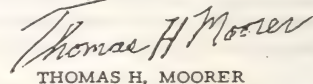
The Panama Canal represents a vital portion of our U.S. naval and maritime assets, all of which are absolutely essential for free world security. It is our considered individual and combined judgment that you should instruct our negotiators to retain full sovereign control for the United States over both the Panama Canal and its protective frame, the U.S. Canal Zone as provided in the existing treaty.

Very respectfully,


ROBERT B. CARNEY


ARLEIGH A. BURKE


GEORGE ANDERSON


THOMAS H. MOORER

[Spotlight, Feb. 19, 1979]

YOU CAN HELP SAVE THE CANAL BUT TIME'S RUNNING OUT

(By Dr. Donald M. Dozer)

The Panama Canal is not lost to this nation. President Carter thinks that he has disposed of this tremendous defense base and commercial waterway of the Americas, but the Canal Zone can still be retained as a territorial possession of the United States. The purported surrender of the canal to Panama by the White House must be seen as a scandalous and indefensible executive usurpation of congressional power.

House—not White House—must decide on giveaway

It is a firmly established principle of constitutional law that the president and two-thirds of the members of the Senate cannot by themselves conclude treaties that dispose of territory and other property of the United States. This power is given in the Constitution exclusively to Congress, which includes the House of Representative (Article IV, Section 3, (2)). Nevertheless, throughout the negotiations of the two treaties with the Republic of Panama and throughout the alleged processes of ratification last year the Carter administration deliberately ignored the House of Representatives.

It must be insisted that the president's power over the conduct of foreign relations is not absolute. In the matter of the alienation of the Canal Zone, which has been repeatedly characterized by the Supreme Court and other United States courts as "unincorporated territory of the United States," the president cannot act without the concurrence of the Congress. At stake is a fundamental constitutional principle involving the authority of the people of the United States, directly represented in the Congress, to prevent a president from surrendering (through treaty powers) legally-acquired United States territory.

Senate wants House consulted

To ensure that the House would be consulted in the case of the Panama treaties, the Senate last fall adopted the Brooke amendment postponing until March 31, 1979 the date that the treaties would go into effect. This amendment was adopted by the Senate by a vote of 87 to 3.

By a process of arm-twisting and bribery the White House secured approval of the treaties by a bare two-thirds-plus-one vote (68-32) in the Senate in September. But of the 23 Senators voting for them who came up for reelection in the November elections, only six who had voted to give the canal and the Canal Zone to Panama were reelected. Accordingly we now have a new Congress which is more mindful of the national interest than was the former one.

In this period of financial stringency it is essential that, for financial reasons alone if no other, we should prevent the giveaway of this valuable national asset with a replacement value of at least \$15 billion and prevent a continuing drain of approximately \$2 billion from American taxpayers to Panama over the next 20 years, as stipulated in the treaties.

Patriots must act now to save canal

Under the Brooke amendment only two months now remain for Congress to block the surrender to Panama of sovereignty over the Canal Zone.

During this brief period Congress must pass a "sense resolution" recalling its authority over the disposition of United States territory and other property of the United States—specifically over the canal and the Canal Zone.

Congress must defeat every White House request for legislation to implement the treaties with Panama. By denying funds to the White House for carrying out the transfer of the territory to Panama, Congress can prevent the treaties from going into effect on October 30, 1979, six months after the term of the Brooke amendment. Unless such action is taken by Congress, the sovereignty of the United States over the Canal Zone will lapse on March 31, and the treaties will automatically go into effect the following October. The canal and the Canal Zone will then become the property of Panama and will be lost irretrievably to the United States.

Those congressmen who are apathetic toward this crisis must be alerted by their patriotic constituents to check the White House in its unconstitutional course and to restore the balance intended by the Constitution between the executive and legislative branches of the government, our surest bulwark against executive tyranny. Time is running out. Haste is imperative.

STATEMENT OF HON. SAM B. HALL, JR., A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF TEXAS

MR. CHAIRMAN, I APPRECIATE THE OPPORTUNITY TO SHARE A FEW THOUGHTS WITH YOU AND MY OTHER COLLEAGUES ON THE SUBCOMMITTEE REGARDING IMPLEMENTATION OF THE PANAMA CANAL TREATIES.

TO MY WAY OF THINKING, THE DEBATE ON THE NEW TREATIES HAS PROPERLY SHIFTED TO THE HOUSE. THIS BODY HAS BECOME THE FORGOTTEN FACTOR IN THE ENTIRE LEGISLATIVE DISCUSSION OF THE TREATIES AND THEIR FUTURE IMPLEMENTATION, AND FROM WHAT I READ AND HEAR, THE HOUSE IS BEING TAKEN FOR GRANTED BY THOSE WHO ADVOCATE ACCEPTANCE OF THE TREATIES AT ANY COST TO THE AMERICAN PEOPLE.

WHILE IT MAY BE HISTORY, HINDSIGHT, AND WISHFUL THINKING, I BELIEVE THAT IF THE PANAMA CANAL TREATIES CAME BEFORE THE SENATE TODAY FOR A VOTE, THEY WOULD BE REJECTED. THE SECOND OF THE TREATIES ONLY PASSED BY ONE VOTE LAST YEAR, AND THE PHILOSOPHICAL MAKE-UP OF THE SENATE HAS CHANGED CONSIDERABLY SINCE THEN. THIS IS WHY THE HOUSE MUST EXERCISE ITS PREROGATIVES AND EXAMINE CLAUSE BY CLAUSE THE BILLS SPECIFYING HOW THE TREATIES ARE TO BE IMPLEMENTED.

IN LIGHT OF ACTIONS IN PANAMA AND THROUGHOUT THE WORLD
 SUBSEQUENT TO SENATE RATIFICATION OF THE TREATIES, THE HOUSE
 HAS A STRONG MORAL AND LEGAL OBLIGATION TO COME CLEAN WITH
 THE AMERICAN PEOPLE AND DEVISE A FORMULA FOR IMPLEMENTATION
 THAT PROMOTES THEIR BEST INTERESTS.

SOME PUNDITS AND ADMINISTRATION SPOKESMEN NO DOUBT
 RESENT, AND EVEN FEAR, CLOSE SCRUTINY BY THE HOUSE ON THIS
 IMPORTANT ISSUE. THEY WOULD ARGUE THAT THE EXECUTIVE IS SOLELY
 RESPONSIBLE FOR THE CONDUCT OF FOREIGN POLICY, INCLUDING THE
 IMPLEMENTATION OF A TREATY. THAT ARGUMENT MAY HAVE HELD WATER
 AS FAR AS THE PUBLIC IS CONCERNED SOME TEN YEARS AGO. BUT THAT
 WAS BEFORE VIETNAM. PASSAGE OF THE WAR POWERS BILL SEVERAL YEARS
 AGO FOREVER DISPELS SUCH A NOTION. IT SEEMS THAT ARTICLE I OF
 THE U.S. CONSTITUTION HAS BEEN RE-DISCOVERED. ALSO, IT MIGHT
 HELP US ALL TO "RE-DISCOVER" ARTICLE IV, SECTION 3, CLAUSE 2,
 OF THAT SAME CONSTITUTION. IT READS:

"THE CONGRESS SHALL HAVE POWER TO DISPOSE OF
 AND MAKE ALL NEEDFUL RULES AND REGULATIONS
 RESPECTING THE TERRITORY OR OTHER PROPERTY
 BELONGING TO THE UNITED STATES; AND NOTHING IN
 THIS CONSTITUTION SHALL BE SO CONSTRUED AS TO
 PREJUDICE ANY CLAIMS OF THE UNITED STATES, OR
 OF ANY PARTICULAR STATE."

IN REMEMBRANCE OF THIS OFT-FORGOTTEN DOCUMENT OF OUR
 LIBERTIES, THE HOUSE OF REPRESENTATIVES NOW HAS A GOLDEN OPPORTUNITY

TO BOTH DEFEND IT AND CARRY OUT ITS MANDATE.

WE CAN BEGIN BY ASKING HOW MUCH IS THE TREATY GOING TO COST THE AMERICAN TAXPAYER. AS OUR COLLEAGUE, GEORGE HANSEN, HAS SO SUCCINCTLY POINTED OUT, BASED NOT UPON HIS ESTIMATES BUT THOSE OF THE ADMINISTRATION, IT WILL INITIALLY COST "UNCLE SUCKER" SOME \$633 MILLION, AND THIS DOES NOT INCLUDE FUTURE LOANS AND DIRECT FOREIGN AID ASSISTANCE.

LAST MAY, DURING CONSIDERATION OF H.R. 12598, THE SO-CALLED "FOREIGN OPERATIONS" BILL, THE HOUSE VOTED TO DENY FUNDS IN THAT BILL FOR IMPLEMENTING THE TREATIES. OF COURSE, THIS ISN'T BINDING, SINCE FUNDS CAN BE LOCATED BY THE STATE DEPARTMENT IN ANY NUMBER OF "CONTINGENT" AREAS TO IMPLEMENT THE TREATIES, BUT IT IS AN INDICATION THAT WE ARE WILLING TO STAND UP AND BE COUNTED.

AS WE HAVE LEARNED SO OFTEN IN THE PAST, IF YOU DON'T "SPELL IT OUT" TO THE EXECUTIVE BRANCH OF GOVERNMENT, REGARDLESS OF WHETHER THE DEMOCRATS OR THE REPUBLICANS HAPPEN TO BE IN CONTROL, MONEY WILL BE FOUND SOMEWHERE TO CARRY OUT QUESTIONABLE POLICY. A CASE IN POINT RECENTLY OCCURRED WHEN, DESPITE THE BROOKE AMENDMENT, THE DEPARTMENT OF DEFENSE AUTHORIZED OVER \$10 MILLION OF THE TAXPAYERS' MONEY FOR MILITARY CONSTRUCTION IN THE CANAL ZONE. THAT AMENDMENT, TOGETHER WITH THE OTHER KEY SENATE "RESERVATION" DURING THE ENTIRE TREATY DEBATE, SOUGHT TO PREVENT THE EXECUTIVE

FROM USING DEPARTMENT OF DEFENSE MONIES TO CARRY OUT PROVISIONS OF A TREATY WITHOUT SPECIFIC CONGRESSIONAL APPROVAL.

MR. CHAIRMAN, LETS GO ON RECORD AND BE SPECIFIC ABOUT THESE TREATIES; NAMELY THAT THE PRESIDENT CANNOT TRANSFER ANY UNAUTHORIZED FUNDS TO IMPLEMENT ANY PROVISION OF THE PANAMA CANAL TREATIES WITHOUT THE EXPRESS CONSENT OF THE CONGRESS.

IN THE PAST FEW MONTHS NEW EVIDENCE HAS COME TO LIGHT INDICATING THAT THE AMERICAN PEOPLE AND THEIR GOVERNMENT HAVE BEEN "FLEECE" BY THE GOVERNMENT OF PANAMA AND THE PROVISIONS OF QUESTIONABLE TREATIES. IN ADDITION TO NEW REVELATIONS ABOUT THE OVERALL COSTS TO THE AMERICAN PEOPLE, WE NOW FIND THAT GOVERNMENT LEADERS IN PANAMA HAVE COVERTLY AND OVERTLY ATTEMPTED TO SWAY WORLD OPINION AGAINST THE UNITED STATES, THAT THE PANAMA GOVERNMENT HAS AN ATROCIOUS RECORD ON HUMAN RIGHTS, THAT THE GOVERNMENT OF PANAMA HAS UNJUSTLY AND ILLEGALLY CONFISCATED THE PROPERTY OF AMERICAN CITIZENS AND THAT THE GOVERNMENT OF PANAMA IS POSITIONING ITSELF TO USE THE CANAL AS A STRATEGIC WEAPON THAT REFLECTS ITS LEFTIST LEANINGS.

MR. CHAIRMAN, THE SENATE SHOULD NEVER HAVE RATIFIED THE PANAMA CANAL TREATIES. WE HAVE THE OPPORTUNITY NOW TO "CLEAN THEM UP" HERE IN THE HOUSE AND GIVE THE AMERICAN PEOPLE THE ASSURANCE THAT THE CANAL WILL REMAIN OPEN WITH ALL EXPENDITURES ABOVE BOARD. IF WE CAN'T GIVE THAT ASSURANCE, THEN WE SHOULD STRICTLY INVOKE ARTICLE IV, SECTION 3, CLAUSE 2 OF THE CONSTITUTION AND NOT TRANSFER U.S. PROPERTY IN THE CANAL ZONE TO THE GOVERNMENT OF PANAMA.

STATEMENT OF HON. DR. RON PAUL, A REPRESENTATIVE IN CONGRESS FROM THE
STATE OF TEXAS

Mr. Chairman, I thank you for the opportunity to submit a statement during these hearings on implementation of the Panama Canal treaties.

While in Congress in 1976, I introduced H. Res. 1410 for the purpose of expressing the sense of the House of Representatives that:

- (1) the Government of the United States should maintain and protect its sovereign rights and jurisdiction over the canal and zone, and should in no way cede, dilute, forfeit, negotiate, or transfer any of these sovereign rights, power, authority, jurisdiction, territory or property that are indispensably necessary for the protection and security of the United States and the entire Western Hemisphere; and
- (2) there be no relinquishment or surrender of any presently vested United States sovereign right, power, or authority or property, tangible or intangible, except by treaty authorized by the Congress and duly ratified by the United States; and
- (3) there be no recession to Panama, or other divestiture of any United States-owned property, tangible or intangible, without prior authorization by the Congress (House and Senate), as provided in article IV, section 3, clause 2, of the United States Constitution.

Since July of 1976 when that Resolution was introduced, many things have happened. The Resolution was not acted upon by the House. The President, after appointing a negotiator not confirmed by the Senate, signed a treaty with Omar Torrijos, dictator of Panama. The Senate ratified the treaty signed earlier by President Carter, and today we are discussing implementation of that treaty. The difficulty with such a discussion is that the treaty we are proposing to implement is not valid, and there is, in fact and in law, no treaty to implement.

In his testimony before the Subcommittee on Separation of Powers of the Senate Judiciary Committee on November 3, 1977, Professor Raoul Berger of the Harvard Law School made the following comments:

Although I am in favor of the Panama Canal Treaty, I share your solicitude for the preservation of constitutional boundaries and your concern lest the function committed to Congress be diminished.

I have long held the conviction that all agents of the United States, be they Justices, Members of Congress, or the President, must respect these boundaries. No agent of the people may overleap the bounds of delegated power. That is the essence of constitutional government and of our democratic system.

The Constitution explicitly provides in Article IV, Section 3, Clause 2 that Congress, not the Senate alone, or the President alone, or the Senate and the President together, has the sole power to dispose of property of the United States. To discuss implementation of a treaty which is blatantly unconstitutional is to acquiesce in a usurpation of power by the Executive. Professor Berger included in his testimony in 1977 some remarks about the hearings in which he was participating. Those remarks apply equally well to these hearings here today.

The effect of these hearings ranges beyond the Panama Treaty. The Panama cession will constitute a landmark which, should the State Department prevail, will be cited down the years for "concurrent jurisdiction" of the President in the disposition of United States property. Acquiescence in such claims spells progressive attrition of Congressional powers; it emboldens the Executive to make ever more extravagant claims. I would remind you that Congressional acquiescence encourages solo Presidential adventures such as plunged us into the Korean and Vietnam wars. Congressional apathy fostered the expansion of executive secrecy. Then as now the State Department invoked flimsy "precedents," for example the pursuit of cattle rustlers across the Mexican border to justify Presidential launching of a full-scale war. If Congress slumbers in the face of such claims it may awaken the Samson shorn of his locks.

Professor Berger was quite forceful in expressing his view that no property belonging to the United States in Panama can be transferred to Panama by treaty alone. The Professor did not hesitate to draw the logical conclusion of this idea, that any treaty purporting to transfer United States property, even if ratified by the Senate, is void.

We need not, of course, rely on expert opinion to reach this conclusion. The Constitution is perspicuous. It could not speak more clearly on the issue. The oaths that each Member of Congress has taken to uphold the Constitution

requires, that each Member reject any attempt to implement this treaty, unless, of course, the Member wishes to commit perjury and face the consequences of that action. If one wishes to maintain that the Constitutional requirements have been met for the disposition of United States property in Panama, let him present the evidence of any action taken by the House of Representatives in disposing on that property. Until such evidence is presented, discussion of implementation of the treaty signals one more instance of Congressional obsequiousness in the face of Presidential usurpation.

STATEMENT OF HON. WILLIAM C. WAMPLER, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF VIRGINIA

Mr. Chairman, members of the Committee:

The highly controversial ratification of the Panama Canal treaties by the Senate during the 95th Congress continues to bring a deluge of constituent mail to my office. These people are opposed to the treaties, and are opposed to legislation necessary to implement the treaties.

Their concerns are well founded. Too many questions remain unanswered with regard to the future security of the Panama Canal and with regard to the costs to the American taxpayer that will result from the proposed transfer of ownership.

Our national security could be a stake in this instance. With the recent events in Iran, we have seen how very quickly changes in governments can be accomplished. At best, we are guessing at our future security when choosing to hand over control of the Canal to a possibly hostile government.

I strongly feel that Americans will feel the squeeze on their wallets once control of the Canal is transferred. Fees for use of the Canal, without adequate controls, will increase on every item using the waterway, the cost being passed along to the ultimate purchaser -- the consumer.

Consider the views of the average American -- reconsider the decision of the Senate to transfer ownership of this vital resource to an unknown future fate. I urge the Committee to reject legislation to implement the Panama Canal treaties.

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STATEMENT OF HON. MATTHEW J. RINALDO, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF NEW JERSEY

Mr. Chairman:

Since the Senate approved the Panama Canal treaties last year, a number of significant economic and political developments have occurred throughout the world that raise serious doubts about the wisdom of implementing them as ratified.

The chief problem is oil -- Alaskan oil that must come through the Panama Canal to reach the Gulf Coast and East Coast refineries. With the cutoff in supplies of Iranian oil, and new threats to other energy sources in the Mideast, now is hardly the time to put our newest source of domestic oil production in jeopardy.

I am fearful that the new treaties would give Panama and its friends in Cuba an excuse arbitrarily to raise the rates on oil shipments through the Canal Zone; it would also grant them the ability to stop the flow of this cargo at any time suitable to their own political needs. We can ill afford to expose our oil lifeline to the rulers of Panama without ironclad assurances that there will not be any interruptions in the shipment of oil through the Canal.

Another question that should be raised in light of the decline in the dollar and the strains on the U.S. budget is the schedule of future payments to Panama. I recognize that there are many different estimates of the eventual cost to U.S. taxpayers. These figures range in the billions without including the possibility of constructing another Canal or expanding the present system.

There is, for instance, a promise to pay Panama \$295 million in economic aid through Export-Import bank loans, plus direct annual payments to Panama of \$1.5 million a year until the year 2000. It also is my understanding that the treaty commits Congress to provide Panama with \$50 million in military aid, and another pledge to cover any future operating deficits. Meanwhile, we are informed that the Canal is losing half a billion dollars a year, and that Panama may raise the tolls.

Our hemisphere -- not just the United States, but all of our Latin American partners -- depends on the Canal as a trade route. This treaty, if implemented, could put a gun against the head of every government in the hemisphere.

The consequences of this treaty would be reduced trade, higher costs for raw materials passing through the canal, higher costs to the American taxpayers to operate the Canal under the control of a weak government and inefficient administration, and the exposure of Alaskan crude oil shipments to threats of a possible cut-off.

I urge this subcommittee to use the power of the purse to block the implementation of parts of this treaty.

Thank you, Mr. Chairman.

[Whereupon, at 12:10 p.m., the hearings were adjourned, to reconvene at 9 a.m., Thursday, February 15, 1979.]

CANAL OPERATION UNDER 1977 TREATY

THURSDAY, FEBRUARY 15, 1979

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON THE PANAMA CANAL,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 9:10 a.m., in room 1334, Longworth House Office Building, Hon. Carroll Hubbard (chairman of the subcommittee) presiding.

Present: Representatives Hubbard, Murphy, Dingell, Bonior, Bauman, Treen, Carney, and Dornan.

Staff present: Ernest J. Corrado, chief counsel; Larry O'Brien, deputy chief counsel; Bernard Tannenbaum, special counsel; Jack Sands, chief minority counsel; W. Merrill Whitman, consultant; Nicholas T. Nonnenmacher, professional staff member; Ken Finney, professional staff member; Kai Midboe, minority counsel; Terrence W. Modglin, staff director; Anita C. Brown, clerk.

Mr. HUBBARD. The Subcommittee on the Panama Canal will please come to order. We will resume hearing witnesses this day, February 15.

Our first witnesses are from the State Department. We are very pleased to have as our first witness, Deputy Secretary of State, Warren Christopher. Mr. Christopher has been active in a number of important policy decisions with respect to the canal. He has a very busy schedule today and we are extremely fortunate to have him with us. I know that he will have to leave soon after his testimony.

Prior to his appointment as Deputy Secretary, Mr. Christopher was in private law practice and served as Deputy Attorney General from 1967 to 1969.

Mr. Secretary, we are delighted to have you.

STATEMENT OF WARREN CHRISTOPHER, DEPUTY SECRETARY OF STATE

Mr. CHRISTOPHER. Mr. Chairman, thank you for that pleasant and considerate introduction. I am happy to meet with the committee today at the opening of your hearings on the legislation to implement the Panama Canal treaties of 1977 and the related agreements.

Other witnesses from the State Department, the Defense Department, and other interested agencies, will comment on the legislation in quite great detail. What I would like to do at the outset here is to step back and comment on the proposed bills from a more general perspective.

Let me say we greatly appreciate Chairman Murphy's cooperation in introducing the bill prepared by the administration. We welcome the opportunity to analyze the provisions of the bill which he and you have separately introduced, as well as the legislation introduced by Congressman Hansen. We particularly appreciate the committee's cooperation in scheduling these hearings as early as you have in this new session of Congress.

The implementing legislation will forge the major remaining link in the chain of events which, after 14 rather long years, resulted in two new treaties' establishing arrangements for the future operation and defense of the Panama Canal in cooperation with the Government of Panama.

The legislation will contribute directly to the security, continuity, and efficiency of canal operations. It will, we believe, provide a framework for effectively exercising the very substantial rights obtained by the United States under the treaties.

More broadly, the legislation, like the treaties, will contribute to the improvement of our relations throughout the Western Hemisphere, helping to replace a long-standing uncertainty and suspicion with a new spirit of partnership and trust.

It is true, Mr. Chairman, that the legislation is complex and that it raises technical issues of organization and finance. Nonetheless, the legislation is of great importance. Its passage is essential to the efficient and successful operation and defense of the canal under the Panama Canal Treaty of 1977.

[Whereupon, Mr. Murphy assumed the Chair.]

Mr. CHRISTOPHER. As we all know, that treaty establishes the terms and conditions under which the United States will operate and defend the canal until the end of the century. The companion treaty concerning the permanent neutrality and operation of the Panama Canal insures the canal's security both before and after the canal is transferred to Panama in the year 2000.

These treaties will come into force on October 1, of this year, 1979. They bind both countries under international law. Our two countries have much to do to prepare for the changes which will occur on October 1 and thereafter.

After the October 1 date, the United States will continue to operate and defend the Canal. It will do so, however, not as a virtual sovereign in the Canal Zone, but rather as a partner in a cooperative enterprise with Panama. We will continue to have the controlling voice, but Panama will also have a significant role to play. For both governments, the situation will constitute an unprecedented challenge in cooperation and partnership.

The way in which we go about exercising our rights and fulfilling our obligations under the treaty will do much to insure an efficient and secure Panama Canal. Thus, in our view, the legislation offers an opportunity to reaffirm and to strengthen our basic objectives with respect to the Panama Canal.

Planning for the implementation of the treaty has gone forward on both sides in a spirit of sincerity and good will. Panamanian and U.S. officials, both civilian and military, are working closely in approximately 30 separate bilateral working groups to plan for the adjustments which will occur under the treaty. We fully expect that the current good atmosphere will be preserved and that we

can look forward to a lasting new relationship with the government and people of Panama.

The new civilian Government of Panama under President Royo has given treaty matters the highest priority. It has centralized its preparation for treaty implementation in a Panama Canal Authority. The Director of the new Authority is Ambassador Gabriel Lewis, the former Ambassador to the United States, whom many of us know and many of you know, and who was closely associated with the negotiations leading to the treaty. The Government of Panama has drawn on many of its most highly qualified citizens to work on Panama Canal Treaty implementation problems.

Mr. Chairman, as required by the treaty, three important ancillary agreements between our governments have recently been signed.

The first will relieve the United States from its current obligation to operate the air traffic control system in Panama and provide for a phased transfer of this function from the FAA to the Government of Panama over a 5-year period.

The second new agreement insures permanent United States use of a portion of the Corozal Cemetery for the remains of American citizens.

The third ancillary agreement will permit American citizens convicted of crimes in Panama and Panamanians convicted in the United States to serve their sentences in their own country. This last agreement, which will be a treaty, is similar, as I am sure the chairman knows, to treaties which we have concluded with Mexico and Canada. Those treaties are being implemented with a high degree of satisfaction by the countries involved.

Thus, the planning for the treaty implementation and the preparation for it are proceeding in an orderly and cooperative manner. For this important process to continue, implementing legislation should be enacted as expeditiously as possible. That is why I am so pleased, as I said earlier, that you are getting a good, early start. To a large degree, it is the legislation which will determine how the treaty will work in practice.

Although others will be commenting in greater detail, I think it is desirable to briefly outline the legislation that we have proposed.

It will establish and provide for the operation of the new entity which will manage the canal and operate it until the year 2000, the new entity to be called the Panama Canal Commission. It will provide a financial system to assure that the canal will continue to operate on a self-sustaining basis.

It will establish the basis for determining the level of tolls. It will establish new conditions of employment, labor relations and retirement for U.S. Government employees in Panama, including particularly those of the Defense Department.

It will establish a system of U.S. criminal jurisdiction for the 30-month transition period which begins on the effective date of the treaty, October 1 of this year. Finally, Mr. Chairman, it will make other aspects of the existing body of U.S. legislation concerning the canal conform with the new treaty.

Clearly, as I said, the legislation involves many matters of technical detail. But it also embodies some important decisions about the way the United States will carry out its treaty rights and

responsibilities. In this regard, Mr. Chairman, I think it is helpful to have before this subcommittee three bills providing for treaty implementation; one, H.R. 1716, which has been introduced through your generous cooperation—that is the executive branch bill; another very similar bill, H.R. 454, from Congressman Hansen; and the third, H.R. 111, which you, Mr. Chairman, have prepared and introduced. The latter suggests, as you well know, certain alternate arrangements proceeding from the thorough study of the matter which you have made over a long period of time.

In many respects, these three bills are similar. But, in others, they differ, posing issues which deserve the fullest consideration from this committee and the Congress. Other administration witnesses will be prepared for extensive discussion of these issues—where the bills differ, and what the pros and cons are with respect to the differences.

I can assure you that we will work constructively with you, Mr. Chairman, and with the members of the committee to produce an ultimately effective statute.

Let me, before I begin to take your questions, say a word or two about the matter of timing, which is very important. It is our view that prompt legislation of this character is of critical importance. Sufficient leadtime is required to plan and prepare for the new situation which will prevail after October 1 of this year.

The authorities responsible for treaty implementation must have a clear understanding, well in advance, of the legal framework in which the canal will be operating after that date. They must know what legal requirements will exist in order to prepare a budget, to carry out personnel transfers and reductions, and to transfer certain functions and activities to other Government agencies.

In addition, Mr. Chairman, the employees of the canal enterprise need and deserve advance knowledge of the terms and conditions under which they may continue working, so that they may make rational decisions about their future and so that the canal enterprise can maintain a competent and dedicated work force.

In this connection, I would like to comment briefly on H.R. 1511, a second bill introduced by Congressman Hansen which, as I understand it, would seek to preclude not only implementation of the treaty, but preparation for implementation until the Congress has completed action on a bill to provide appropriations for these activities.

Legislation of this nature would seem to me to be unnecessary and perhaps prejudicial to our long-term interests and to the interests of those involved with the canal. To prohibit preparation for implementation would serve only to deprive our canal operating authorities, our military forces, and our employees of the ability to insure a smooth and orderly transition when the treaties do enter into force.

It is, I believe, in our national interest that we plan and prepare as thoroughly as possible for the transition that will take place on October 1. Early passage of the implementing legislation is the key to this process.

I would hope therefore, Mr. Chairman, that in both Houses of Congress, the arrangements made to insure prompt treatment of this legislation will be observed. We hope that legislation can be

passed by June 1. Delay beyond that date would decrease the efficiency and, hence, increase the cost of the conversion process. If the delay were much prolonged, it could have a quite serious adverse effect on managerial efficiency, employee morale, and the operation of the canal.

Let me just conclude, Mr. Chairman, by saying that with the passage of the Panama Canal Treaty implementing legislation which is before your committee, we will be in a position to begin a new chapter in the history of the canal. With the cooperation and support of this committee and the Congress, the U.S. Government can open that new chapter with the firm assurance that it will unfold to our own and the world's advantage.

Thank you, Mr. Chairman. Now I will be glad to respond to any of the questions which you or other members of the committee may wish to put to me.

[Whereupon, Mr. Hubbard resumed the Chair.]

Mr. HUBBARD. Thank you very much, Mr. Secretary, for your testimony regarding the implementing legislation.

Let me now call on the chairman of our full committee, Congressman John Murphy, for any questions he might have.

The CHAIRMAN. Thank you, Mr. Chairman. Let me say that on the question of timing, Mr. Secretary, I had assured the President and the Speaker that this committee would act responsibly and within an agreed-upon time frame, so that the committee would finish its deliberation by about the middle of April. We do have an Easter break in the congressional schedule during that period and we are hopeful that we can finish up at about that time.

That would give us the opportunity to go to the Rules Committee with the other three committees and agree upon a procedure for floor action. We certainly would finish floor action, I would say, by the middle of May. Those would be the commitments that the House has control over.

The question then would go to a joint House-Senate conference. The longevity of that conference is beyond the control of the House; it, of course, is a mutual endeavor by both bodies. But I can assure you that we certainly intend to try and expedite properly that conference procedure, so that there would be plenty of time for an orderly transition, that would be in the interests of both Panama and the United States and, of course, the American workers and interests that are so intrinsically involved.

Mr. Chairman, are we going to hear from Ambassador Popper and Mr. Hansell at this time?

Mr. HUBBARD. That is fine with me. Is that your desire, Mr. Secretary. May they go ahead and give their statements now because of the time problem you have?

Mr. CHRISTOPHER. Mr. Chairman, I, of course, will want to do whatever the committee wishes. Because Secretary Vance is out of the country and others are out of the country, I have some duties this morning that would make it desirable that I return to the White House and the State Department as soon as it is the committee's pleasure.

Therefore, it would be my preference—recognizing, of course, that I am here at the committee's pleasure—for you to direct your

questions to me now, I could then leave when that is concluded, if that is agreeable to the committee.

Mr. HUBBARD. There is no problem from any of us on the committee.

The CHAIRMAN. Mr. Chairman, I will go ahead and question.

We should have you back to the State Department by the time the morning jogging session is finished in Mexico City. (Laughter.)

The CHAIRMAN. On page 5 of your testimony, you refer to 30 bilateral working groups. We have seen three executive agreements produced recently. What is the progress of the working groups, and when will their reports be rendered, so that we will be able to consider whether their actions interrelate with implementing legislation?

Mr. CHRISTOPHER. Chairman Murphy, you have asked us a question along those lines and asked for a written response. We have a lengthy written response prepared for you, indicating the status of those binational, bilateral working groups. The clearance process is all but completed on that and we will be able to furnish that detailed answer for the committee within the next day or two; I would fully suspect by the end of the week.

[The material to which reference is made appears following statements of witnesses of the Department of State.]

Mr. CHRISTOPHER. Good progress is being made in many of those committees; some are moving faster than others. A detailed accounting of that will be in the written answer, in response to your written question.

The CHAIRMAN. Within the last month, I met in Panama with President Royo and with Mr. Gabriel Lewis, whom you mentioned in your statement, who is the transition team director for Panama, and with Governor Parfitt, our Ambassador, and others, and did not have the impression that the transition was moving as effectively and completely as it should at this time in order to meet the deadline imposed by the Brooke amendment.

When will Panama have perfected all it is required to in order to effect implementation of the treaties? In other words, perhaps you can tell us specifically what remains to be done by Panama.

Mr. CHRISTOPHER. Well, I think that Panama is proceeding in the same way we are to be ready for the October 1 date. I do not think that we ought to expect them to have concluded their arrangements by the present time, but I would say that our impression is that they are moving right along.

I am sorry if you had a different impression when you were in Panama; that is a matter of concern to me and something that I want to look into immediately with our Ambassador, who is here in the city this week.

Ambassador Popper, perhaps you might want to add a comment on that.

Ambassador POPPER. If I may, Mr. Chairman, the Panamanian Government has set up an Panama Canal Authority in which all planning for implementation concerning the Canal Treaty will be centralized. That authority is under the leadership, as the Secretary said, of Ambassador Lewis. That authority has been working steadily over the last 8 or 10 months; it was formally constituted on September 19, 1978.

It directs the participation of the Panamanian side on the binational working groups to which you have referred. The Panamanian Government has issued a comprehensive statute establishing the authority and defining its relationship to other agencies of that Government, which is somewhat comparable to the implementing legislation on our side in this respect. And while I am sure that no one is completely satisfied with the pace of preparation, which turns out to be very complex indeed, I think it safe to say, Mr. Chairman, that the Panamanians are moving forward reasonably well and are beginning to realize more fully the complexity and scope of the problems that they and we are going to have by next October.

Mr. CHRISTOPHER. I might add to that comment, Chairman Murphy, that it seems to me very salutary that the Panamanians have brought Gabriel Lewis back into the government. I think his administrative ability as a successful businessman and a successful ambassador will be very valuable in pulling this matter into shape. It does need a good deal of pressing forward on many fronts.

But I take your point, and will make sure that we check with them on a regular basis to see if we cannot expedite their preparations, as well as ours.

The CHAIRMAN. It would seem to me that other than the statute that Ambassador Popper just stated, the nuts and bolts of integrating police, fire, sanitation, housing, schools, courts, and the overall Panamanian assumption of the requirements in October, that is presently in the planning stage, is very lacking in the integration of Panama into that operation.

This committee is going down next week and holding 3 days of comprehensive hearings on the subject. I think it would be well-advised if the State Department got into this and had an understanding of how little has been done.

Mr. DINGELL. Mr. Chairman, would you yield?

The CHAIRMAN. I would be glad to yield to the gentleman from Michigan.

Mr. DINGELL. I do apologize; I have to go to the Subcommittee on Energy and Power. Just a couple of brief questions, Mr. Chairman.

You took the position in the administration that the Panama Canal treaties could be fully conducted under the treaty-making power, in consultation with the Senate and without approval of the House. Was that not the position of the administration? Just yes or no.

Mr. CHRISTOPHER. Well, the administration——

Mr. DINGELL. Very simply, yes or no. You went to the Senate to get this matter fully negotiated under the Senate's treaty power; you did not come to the House to discuss the alienation and transfer of property, as required by the Constitution, did you, yes or no?

Mr. CHRISTOPHER. Yes, and may I explain my answer?

Mr. DINGELL. So, having gone to the Senate to get this whole business disposed of by treaty, is it now your position that you can tend to the balance of these undertakings under your treaty-making activities, or is it your view that you now have to have statutory authority?

Mr. CHRISTOPHER. We think it is very important that there be a statute. We think that the implementation——

Mr. DINGELL. I did not ask you if it is important. Do you have to have a statute?

Mr. CHRISTOPHER. We think that Congress will act responsibly and will provide——

Mr. DINGELL. Do not answer the question that way. The question was, do you have to have a statute?

Mr. CHRISTOPHER. We are working on a statute. If we reach the point where Congress is not——

Mr. DINGELL. No, no. Are my questions unclear? I have a very limited amount of time. Do you have to have a statute?

Was it not your posture when you got the treaties through the Senate that you could do the whole thing without House implementation language? Are you discovering now that you need statutory authority?

Mr. CHRISTOPHER. Congressman, if you would permit me to give an answer——

Mr. DINGELL. These are simple questions. I do not need a lengthy State Department answer; all I have got to have is a simple "yes" or "no." I hope that is not too difficult for you. Is it?

Mr. CHRISTOPHER. I must be able to complete my sentence or I cannot answer the question, Congressman.

Mr. DINGELL. I await your answer, but I hope you will be responsive to the question.

Mr. CHRISTOPHER. In the Senate, we felt that the treaties should be put before the Senate and that the property transfer would be implemented under the treaty, but never did we contend that it was not desirable and necessary to have legislation to carry out the purposes of the treaty, and that is why we——

Mr. DINGELL. And that was the position of the State Department, that the Senate, in consultation with you good teasippers down at the State Department, could do the whole business without consultation with the Congress or without enactment of implementing legislation. Was that not your position?

Mr. CHRISTOPHER. No, sir, we never took that position.

Mr. DINGELL. You never took that position? I gathered that you did, and the Senate debates so indicate it and I will be glad to put it in the record in due course.

I find, however, your comments to be rather arrogant at this time, to come forward and tell us how you are going to make us partners in the further giveaway of American property, after you refused to consult with the Congress at a time earlier.

Mr. CHRISTOPHER. Congressman, you will——

Mr. DINGELL. I just want you to carry it back to Mr. Vance. I wish he were here, because I would like to tell him, but you are here and I assume that you will take the message that we in the House are rather tired of being put upon by the State Department, rushing over to your teasipping friends in the Senate to get through legislation that disregards the prerogatives of the House under the Constitution, and then to approach the House of Representatives and say, "Oh, we want to have your help and your advice and your counsel and we think that a statute is very important." I just want you to carry that away with you.

Mr. CHRISTOPHER. Congressman, I will. Could I add that you will recall that during the course of the treaty debate in the Senate, we

circulated on the Hill the draft legislation which is very close to that which is now before you, which reflects the fact that all during this process, we felt legislation would be necessary to fully protect our interests under the treaties.

Mr. DINGELL. Well, for your information, I will quote for you what Mr. Sarbanes said in the Senate during the debate on the ratification issue, and I assume he said this with the full approval of the administration.

As I have indicated, I do not think the implementing legislation is going to affect the treaty terms. The implementing legislation will have to be consistent with the treaty terms. What we have to do is analyze these terms and know what the consequences of these terms are going to be. In that case, the question of economic consequences is a legitimate matter we will have to discuss on the floor of the Senate, but the economic consequences of these treaties are contained in the terms of the treaties.

And then Mr. Sarbanes went on to say:

I grant that this body and the House would consider these terms in the proper legal way. But, nevertheless, as it is presented by the administration, which is responsible for the negotiation of the treaties themselves, to us, it will have some impact. I do not think we can just disregard the information and say it is not important if we see it in advance.

Essentially, what he was saying was that he did not feel that the Senate ought to be bothered with the House, and I assume that was done with the full concurrence of the administration.

There is further discussion in the same debate which indicates the same tenor. Now you good folks come up here and say:

Well, we have got to have some help and you have got to pass legislation now, after we have openly disregarded the prerogatives of the House and after we have openly presumed to sell and give away the property of the people without any proper consultation with the House.

Mr. CHRISTOPHER. Congressman, I certainly would not ever want to demonstrate arrogance to this body or any of its members.

Mr. DINGELL. You already have done it; maybe you personally did not do it, but the State Department did. If you expect me to vote on this travesty after this behavior on these matters, you are sorely in error.

Mr. CHRISTOPHER. Throughout this matter, we have recognized that legislation would be desirable and necessary to fully protect our interests.

Mr. DINGELL. Then I suggest that you do it by treaty, in consultation with the U.S. Senate; they seem to be of greater sympathy in this matter than I am.

Mr. Chairman, I thank you for your courtesy.

Mr. HUBBARD. Thank you, Congressman Dingell.

The CHAIRMAN. If the gentleman is finished, could I reclaim my time?

Mr. HUBBARD. Yes.

The CHAIRMAN. Mr. Secretary, there has been some question raised as to whether the United States and Panama have, in fact, agreed to the same terms for the new treaty arrangement. Is there any question in your mind as to whether Panama and the United States have a firm mutual agreement on treaty terms, notwithstanding the fact that many of the actual concrete terms will be determined in implementing legislation?

Mr. CHRISTOPHER. First, Chairman Murphy, let me emphasize that the Panama Government is absolutely bound by the treaties as they were approved by the Senate, and that includes all of the amendments, conditions, reservations, and understandings which were contained in the Senate resolutions.

The process of ratification made absolutely certain that Panama is bound by all of those reservations, amendments, conditions, and understandings, of which there were many. So I do not have any doubt that we are working from the same text, as far as the treaties are concerned.

Now we move into the process of implementation, and the legislation will play an important role in determining how the treaty is carried out in practice.

The CHAIRMAN. Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Chairman Murphy.

I call on the ranking minority leader, Congressman Bauman.

Mr. BAUMAN. I am just a member, not a leader yet; maybe someday, Mr. Chairman.

Mr. HUBBARD. Yes.

Mr. BAUMAN. I like the phrase; it sounds good this early in the morning. I am going to yield to my colleague from Louisiana who has to go to another subcommittee, if I may at this point, for questions.

Mr. HUBBARD. Certainly, go ahead, Congressman Treen.

Mr. TREEN. Thank you, Mr. Bauman; I appreciate that very much.

Mr. Secretary, I want to try to get a handle on the question of tolls and who has the power to set the tolls in the canal. I am very much concerned about the level of tolls in the immediate future, and then, of course, down the line.

The treaty provides that these matters will be handled by the Panama Canal Commission, to consist of nine members, four of whom shall be Panamanian nationals, and five to be United States nationals to be appointed by the President.

Now, the bill introduced by Mr. Murphy, H.R. 111, reads, in chapter 11, section 411, "The President is authorized, subject to the provisions of this chapter, to prescribe and, from time to time, change rules for measurement and tolls."

The administration bill, H.R. 1716, provides, as an amendment to section 411 of the Panama Canal Code, that:

Changes in basic rules of measurement and changes in rates of tolls shall be subject to and shall take effect upon the approval of the President of the United States, whose actions in such matters shall be final.

Now, the first question is, if our treaty has provided, in what is supposed to be the law of the land, since the treaty has been ratified by the Senate, that the power to set the tolls will be handled by a Commission, how can we in these two bills derogate that power by giving the President authority in these matters?

Mr. CHRISTOPHER. Well, Congressman, under the bill that we have submitted, the Panama Canal Commission does have the authority to which you refer, and we think that is the proper way to implement the treaty. But let me add that the President would have the power to appoint the five members of the U.S. Board of Directors. We have urged that those members be employees of the

Federal Government, so that the President would retain a high degree of control, and it would accomplish, I think, the purpose of insuring that the United States, through its President, has a very strong influence, a decisive influence, in the establishment of the tolls.

Mr. TREEN. Yes, sir, I understand that. But your bill actually provides—and you may want to turn to one of your assistants for this—in clear language that “the changes in tolls shall be subject to and shall take effect upon the approval of the President of the United States.”

If we write that into law, it seems to me that we are saying, statutorily, that whatever the Commission may recommend with respect to tolls cannot go into effect, by the clear language of this, unless it is approved by the President.

I am trying to find out who, in the opinion of the State Department, has the final word with respect to the tolls.

Mr. CHRISTOPHER. Well, the United States has that final authority until the year 2000, and that is why it is provided that the President shall have the final authority, because the United States has the final authority for the management and operation of the canal.

Mr. TREEN. Well, Mr. Secretary, as I say, anybody can clearly read the language of this bill, and I suggest that at least this member is going to need a better explanation of how that power in the President can be greater than the power given to the United States under the treaty.

I am not saying that I hope that the treaty controls this matter; I might hope to have that power in the President. But it seems to me that the clear language of the treaty is that it is in the hands of the Commission. I am concerned about the fact that we have a five to four majority on that Commission, and the fact that if one U.S. member would side with the four Panamanians who would be voting en bloc, then that one U.S. member, together with the Panamanian group, could set the tolls in the Panama Canal during the next 21 years.

After that, as far as I am concerned, the treaty, although it has got some nice language about what the Panamanians will consider in setting tolls—they are really completely free, as a matter of international law, to set the tolls anywhere they want.

Could you address yourself to this question of one U.S. member siding with the other four and the question of whether we could statutorily set limits, such as a percentage limit on toll increases for the first couple of years and then a percentage limit after that—if that would be consistent with the treaty. Could we do that in statute? Last, your reaction to the idea of Senate confirmation of the nine members of the Commission.

Mr. CHRISTOPHER. Well, let me react to that series of questions; I hope I cover all or most of them.

First, I do not see anything inconsistent with the legislation in its present format under which the Panama Canal Commission initially establishes the tolls, and that because of the overriding responsibility of the United States for the management of the canal, they ultimately have to be approved by the President. That seems to me to be a workable procedure.

On the question as to whether one member of the U.S. five might take a different view and thus lessen our control over setting the rates, I would respond by saying that it is because of that fact that the State Department and the administration have urged that all five members be Federal employees who would be under the direction of the President. That seems to me to give more assurance than other suggestions in which the five U.S. Directors would include private parties.

On the question of Senate confirmation that you raise, that seems to me to present a problem of having the U.S. Senate, or somebody here in the United States, approving the four Panamanian members. I do not think that would be agreeable to them any more than it would be agreeable to us to have them approving our five members.

We have tried to surmount that problem by indicating that the five U.S. Directors would be persons who are already subject to confirmation by the Senate here in the United States, or persons directly subject to the persons so confirmed, so the assurance would be provided in that manner.

Mr. TREEN. Let me just ask one last question. In your view, is there anything inconsistent with the treaty in requiring that the five U.S. national members of the Commission vote en bloc; in other words, that on any issue, they determine their position and then cast five votes? And if there is something inconsistent with the treaty, would you point that out?

Mr. CHRISTOPHER. Mr. Treen, that is an interesting question. Let me say that as a matter of the treaty itself, I think there is nothing in the treaty that would be inconsistent with requiring that they vote en bloc. The treaty is silent on that point, and so it is not prohibited under the treaty. Whether it is wise as a matter of policy is something that the Congress will, in its own wisdom, determine.

I would urge you to consider whether or not there might not be some instances in which it would be desirable that the U.S. members would have the freedom to take a different position. There might be some technical subject on which a variety of opinion would be useful. But to answer your specific question, it is not prevented by the treaty, in my view.

Mr. TREEN. Not prohibited by the treaty?

Mr. CHRISTOPHER. Not prevented or prohibited by the treaty, in my view.

Mr. TREEN. Thank you, Mr. Secretary. Thank you, Mr. Bauman.

Mr. HUBBARD. Congressman Bonior?

Mr. BONIOR. Thank you, Mr. Chairman. I apologize for being late, and if I ask a question that has already been asked by the chairman, I will look into the record to get the answer.

I am concerned by a couple of differences in the administration bill and in H.R. 111, and I think one of those differences has just been touched upon, and that is the composition of the Commission in the ratification process.

The need, I think—and perhaps you could talk about this for a second—to have members of the Commission that are members of the Government and who have a close relationship with the Government, would seem to be important in this period of transition. If

you could go into that a little bit more, I would like to hear your comments.

Mr. CHRISTOPHER. Yes, Congressman. We think that a number of agencies and departments of Government have a very high stake in the successful operation of the canal. It is not only the Defense Department, which has a long and historic connection with the canal, but the State Department, the Department of Transportation, the Department of Commerce, and the Treasury Department.

And it is for that reason, because of the high interest and important stake that each of those departments has in a successful canal operation, that the bill that we propose would allow us to carry out our intent that high-ranking officials from those departments be named as members of the Board of Directors and, indeed, that the interagency committee that provides policy guidance to the President on this subject be drawn from those departments.

One can always make an attractive case for outsiders and for private citizens to play an important role on advisory bodies, but having considered that matter and weighed the pros and cons, we thought that the experience and involvement of those governmental departments made it desirable that the members of the Board of Directors be drawn from those departments.

Mr. BONIOR. The second part of that concerning the ratification of the Panamanians to the Commission, what kind of effect would that have on the Panamanian Government? I would assume it would have a rather negative effect, and I would certainly be insulted if I were a Panamanian to be a part of a situation like that.

Have you had any contact or spoken to the officials of that Government with respect to this provision?

Mr. CHRISTOPHER. Mr. Bonior, you referred to ratification; you perhaps meant to say confirmation of them by—

Mr. BONIOR. I am sorry; of the Senate.

Mr. CHRISTOPHER. I have not had any personal contact on that particular subject, but having talked a good deal with Panamanian officials at the time of the ratification of the treaties, I have no doubt that they would regard that as a very unattractive invasion of what they regard as sovereign rights. I think it would hit at a very important point of sensitivity, and it seems to me that under the treaty and under the good relations that we hope will come out of the treaty operation, it would be a false start for us to ask to have the right to confirm here in the United States the members that they nominate.

Mr. BONIOR. Let me just turn to one other point quickly, and then I will yield back my time. Yesterday at the hearings, some questions with respect to interest payments to the United States and the amortization of property were raised. We tried to get some answers on how those two provisions would affect the toll rates. Could you address yourself to that?

Mr. CHRISTOPHER. Very substantially.

Mr. BONIOR. In what way; how?

Mr. CHRISTOPHER. Well, if Congress were to accept the administration's recommendation that the annual interest payment that is now being made be repealed, then the increase in toll rates, I think, would be quite modest. The canal traffic is up this year, and

there is an expectation that if the interest payment is not insisted on, then it would be possible to have the tolls raised by under 20 percent.

On the other hand, if the interest is required, I think the toll increase would have to be someplace between 20 and 30 percent. These are all subject to the traffic in the canal, and so they are subject to some future uncertainties.

On the other point that you made, if there is a requirement that an amortization payment be made, that would impose an additional—relatively heavy—requirement, perhaps in the neighborhood of \$15 million a year, which would once again result in an increase in the toll rates.

So if you are thinking about it from the standpoint of consumers or users of the canal, you have to balance the advantages of insisting on those payments against the increase in tolls that would inevitably result. I would say those increases would be quite substantial, and I have given you the range of figures which are our best present estimates.

Mr. BONIOR. Well, I think I would appreciate, and perhaps the committee—and I know Chairman Murphy would appreciate knowing how you derived those rate figures and those toll figures.

Mr. CHRISTOPHER. We will be very glad to give you the best detailed accounting and projections that we can.

[The material submitted is as follows:]

RATE FIGURES AND THE TOLL FIGURES DERIVATION

Our conclusions are based on an approximate estimate of Canal operating requirements for fiscal year 1980 as envisioned by the Administration's proposed bill (H.R. 1716).

In fiscal year 1980, total Panama Canal Commission operating expenses are calculated by the Panama Canal Company to be \$332,393,000, of which \$74,930,000 will constitute payments to Panama under Articles III and XIII of the 1977 Treaty. These expenditures exclude any requirement to pay interest to the U.S. Treasury, amortization of the U.S. investment and financing by the Commission of the liberalized early retirement program proposed in Section 326 of H.R. 1716.

Under existing toll rates, toll revenues for fiscal year 1980 are estimated by the Company at \$227,600,000. Revenues from other sources should add another \$72,121,000, giving the Commission a total revenue of about \$299,721,000. Based on this information, the Company has concluded that the deficiency of Canal revenue in fiscal year 1980 would be approximately \$32,672,000 and would require the Commission to levy a rate increase of 14.355 percent. This is a rough estimate and is based on cost assumptions derived from H.R. 1716.

H.R. 111 as originally proposed would add to the foregoing operating expenses an interest payment to the Treasury, amortization of the U.S. investment and financing of the early retirement program. The interest payment required by H.R. 111 would increase toll rates by about 10.72 percent over the 14.355 percent suggested by H.R. 1716. Amortization of the U.S. investment would add another 6.13 percent and early retirement 4.37 percent to the rate increase. At a minimum, H.R. 111 would impose a 35 percent toll rate increase on Canal users.

The foregoing projections are rough estimates of Canal toll rates as they might be under cost assumptions implied by H.R. 1716 and H.R. 111. Under existing law, the Panama Canal Company has the responsibility of recommending new toll rate changes to the President to be effective on October 1.

Mr. BONIOR. Thank you, and I yield back my time, Mr. Chairman.

Mr. HUBBARD. Thank you, Mr. Bonior.

The ranking minority member, Mr. Bauman, waived his time earlier for Congressman Treen. I call on Congressman Bauman again.

Mr. BAUMAN. Thank you, Mr. Chairman.

Mr. Secretary, I know you have more pressing matters this morning in many parts of the world. I do not want to detain you, but I have only had a chance to read your statement last night, and Mr. Popper's; I have not had a chance to get to Mr. Hansell's or the others. I therefore wanted to ask a general question.

These treaties have not yet taken effect, have they?

Mr. CHRISTOPHER. They have not taken effect, no.

Mr. BAUMAN. When will they actually take effect?

Mr. CHRISTOPHER. They will actually take effect on October 1 of this year, 1979.

Mr. BAUMAN. Has there been any effective exchange of ratifications of these?

Mr. CHRISTOPHER. Yes. The ratification documents were delivered last year and, under the provisions of those documents, the treaties will take effect on October 1.

Mr. BAUMAN. The reason I asked that question was I thought it was clear under the Brooke reservation that despite all of the hoopla of signing documents in Panama and in the United States, these treaties are not in effect at this time; the exchange of documents effectively has not occurred. Is that right?

Mr. CHRISTOPHER. Well, the documents have been delivered. The exchange takes effect on April 1; there is a 6-month waiting period provided for in the treaties, and so they come into force on October 1. I mentioned that April 1 date, but I think the substantive answer that you want is that the treaties come into force on October 1. But, Mr. Bauman, if I sense an underlying question as to whether or not what we have done is in compliance with the Brooke amendment, I want to give you my strongest assurance that it absolutely is.

The Brooke amendment provides that the exchange of instruments of ratification shall not be effective earlier than March 31, 1979, which is what has been done. That starts the 6-month period going, and that 6-month period then ends and the treaties come into force on October 1, 1979.

Mr. BAUMAN. So that other than the willingness to cooperate with the Panamanian Government, you really have no authority to proceed in any manner, except informally, up until this point, is that correct?

Mr. CHRISTOPHER. We have been getting ready for this historic and important change and taking the steps necessary to be ready when the treaties come into force on October 1, that is correct.

Mr. BAUMAN. But you have had no legal authority to carry out any terms of the treaties, and will have no such authority until April 1, is that correct?

Mr. CHRISTOPHER. I think a government has the authority to make plans and preparations to get ready for the implementation of a treaty which has been ratified by the Senate and on which the documents have been deposited.

I hope I am not in a semantic discussion with you; I do not intend to be. But it is clear to me that a government ought to get ready when it knows that a treaty is about to come into force.

Mr. BAUMAN. Well, Mr. Secretary, I do not want to quibble about that point. I think the questions will be better addressed to later

witnesses, but there are some of us who have some concern about the executive branch's proceeding to spend funds, to make agreements and to make physical changes in the property of the United States, lacking any authority from the Congress or any authority under these proposed treaties which have yet to take effect. Maybe I had better address that to others later.

Mr. CHRISTOPHER. If I could just add one comment and then perhaps you can get a more detailed answer from my colleagues, nothing we have done to this point, Mr. Bauman, so far as I know, has depended upon the legal authority within the treaties. The action we have taken has been consistent with the responsibility of the executive branch and has not flowed from the treaties themselves. That is the differentiation I would make, though I would be glad to have you question Mr. Hansell more closely about that later in the morning, if you wish to do so.

Mr. BAUMAN. I certainly will do so; Mr. Hansell and I have had some pleasant exchanges over the last 6 months or a year.

Let me also just state an observation. You lay great store in the necessity of this subcommittee and the committee to act in a timely fashion. The fact of the matter is that this treaty was signed in September 1977, and it was ratified a year ago by the Senate. Despite the requests of Members of Congress such as myself and many Members of the other body as well, repeated requests for the drafts of the implementing legislation went unanswered.

Now we are told that in the space of 3 or 4 months we must fill out the skeleton of this treaty with detailed legislation in order to, in effect, carry out the wishes of those who supported the treaty. I mean, it is really not the House's fault that we are in this time bind.

Mr. CHRISTOPHER. Mr. Bauman, I have some sympathy for what you say, and I thank the committee for its cooperation. I have appreciated Chairman Murphy's statement, which I thought was very forthcoming as to the time schedule that you would try to follow.

Final agreement within the executive branch has been reached only very recently as to the provisions of legislation, and that is a process which, I know, is sometimes frustrating up here on the Hill, and it sometimes is frustrating down at the other end of the avenue.

In some defense of our position, I might say, Mr. Bauman, that the draft which we circulated at the time the treaty was under discussion in the Senate is very similar to the overall provisions that you are now considering. That was printed in the Congressional Record and it was there for anyone to consider.

Having said that, I do not want to gainsay your point that until you actually have the draft that has been formally presented by the administration, you lack the certainty that is provided by that fact.

Mr. BAUMAN. Well, I would just observe that we still lack that certainty, and I may ask a question before my time runs out. But I want to ask you, as the highest officer that is likely to appear before our committee, to what extent does the bill that the administration has submitted to us reflect consultation with, demands from, or, in any form, the view of the Panamanian Government,

and to what degree will variation from those terms cause problems between the two nations, as you see it?

I notice that in Ambassador Popper's statement he, on several points, says that this would make the Panamanians unhappy if we made this change or that change. Have you consulted with them in writing this legislation?

Mr. CHRISTOPHER. The drafting of the legislation was done within the executive branch and we have had no specific consultation with the Panamanians. I would have to say to you, and I want to be candid on this, the legislation was drafted, taking into account Panamanian sensitivities; we regard that as being part of our job.

I think we will also want to be able to tell the committee those proposed changes which we think would have an adverse reaction in Panama. But the legislation has been drafted to reflect the U.S. interest and it has been drafted without any specific consultation with the Panamanians.

Mr. BAUMAN. But I assume that in doing that, you have a full understanding from the negotiations of the pressure points, their sensitivities and what they want, and this does reflect, to some degree, that.

Mr. CHRISTOPHER. I hope we have a good understanding. Whether we have a full understanding, Mr. Bauman, only time will tell. The concerns and sensitivities of the United States sometimes are hard for other nations to gage, and we have a similar problem. But we have done our best to fashion legislation which protects the U.S. interest and takes into account the legitimate concerns of the other nation.

Mr. BAUMAN. Mr. Secretary, my last question at this point—and it is one that you may not be able to answer in detail, but I hope you will before this day is out, or we extend the hearings on the implementing legislation to get the answer—deals with the cost.

This committee was told last August by Ambassador Linowitz, "It," meaning the treaty and the economic terms of the treaty, "will not involve any additional burden for the American taxpayer, since it can be financed from canal revenues."

I quote to you Secretary Vance in hearings before the Senate, "The treaties require no new appropriations, nor do they add to the burden of the American taxpayer." Now, this was an oft-repeated slogan, to the point that perhaps you could have had it printed on a bumper sticker during the deliberations of the treaties, and it became a central point of argument.

As I recall, it was not until halfway through the Senate deliberations that a memorandum from the State Department admitted the possibility of massive amounts of annual appropriations being necessary to meet the commitments under article XIII of the treaty.

Now, article XIII is very specific as to the payments to be made to the Panamanian Government. And along with the 30 cents per Panama Canal ton, the fixed annuity of \$10 million—of course, the per ton payment to be revised periodically; nine times, I think, over the life of the treaty—there is a second \$10 million which is to be paid to the extent that "such revenues exceed expenditures."

During my visit to Panama last January, in a lengthy discussion—and some of the staff was present—with the then Finance Minister of Panama, Nicholas Barletta, he was very clear, and

other officials confirmed their understanding, that they had a right not to just the \$10 million payment, but a \$20 million payment, without regard to any net revenue situation.

In fact, although he is no longer in office, his estimate for the assembly there some 12 months ago was that they would get double what the State Department's estimate was over the life of the treaty.

Can you provide this subcommittee a detailed analysis of how we are going to meet the terms of this treaty, and precisely what it will cost in terms of tolls or appropriations?

Mr. CHRISTOPHER. Congressman Bauman, I first want to say that I think you have made a fair statement and asked a fair question, and we will provide as full an answer as we are able to in due course.

The debate in the Senate did sharpen the very point that you have now again referred to and put your finger on. The representation is correctly made that the treaties will not require additional appropriations for payments to Panama. Indeed, one of the reservations that was put in by the Senate—I think it is reservation No. 2—makes that very explicit, in case there was any doubt about it, that no payment would be drawn from the U.S. Treasury, under the requirements of article XIII, paragraph 4, without prior statutory authorization.

But it is correct that there will be payments required by the United States, not to Panama, but to do things which are in the interests of the United States. To give you just a round figure now, which we will supplement since you have given us that opportunity, the best estimate we arrived at last year during the Senate debate was that during the life of the treaty, approximately \$350 million will be expended, mainly for the relocation of defense facilities, but also for such things as early retirement and employee benefits.

But we will supply those figures to you as comprehensively as possible. The figures are changing over time. For example, we now estimate that it will cost approximately \$1.7 million more than we earlier estimated in order to relocate the remains of American citizens. We will give you the best figures we can.

[The following was received for the record:]

MEMORANDUM ON COST TO THE UNITED STATES IN CONNECTION WITH
IMPLEMENTING THE PANAMA CANAL TREATY

During Congressional Hearings on the Panama Canal Treaty implementing legislation, questions were raised regarding the cost to the US taxpayer of putting the Treaty into effect.

The Executive Branch has reviewed and refined the preliminary estimates of such costs presented to the Senate early in 1978, during its consideration of the Panama Treaties. The results of the review are contained in this Memorandum.

Certain points will be helpful in setting this subject in proper perspective.

As stated from the outset, payments of annuities to Panama under Article XIII of the Canal Treaty will be drawn entirely from Canal revenues. Reimbursement to the Republic of Panama for public services provided in Canal operating and housing areas pursuant to Article III, Paragraph 5 of the Treaty will likewise be a charge against the income of the Panama Canal Commission from Canal operations.

In the first year of operations under the Treaty (US Fiscal Year 1980) these payments to Panama should be in the neighborhood of \$75 million, the exact amount depending upon the volume of Canal traffic. Tolls will be set to include all required payments and reimbursements, but not the contingent annuity to be paid pursuant to Article XIII 4(c) if a surplus of revenues over expenditures should exist at the end of the year.

Certain expenses will have to be borne by the US Government in making the changes and fulfilling the commitments arising from conclusion of the Canal Treaty. The expenditures involved are in the national interest. They are in no way disproportionate to the advantages gained by the United States from the Treaty settlement.

The benefits to this country of efficient and dependable Canal transit, secured by our military facilities, by our permanent defense rights, and by our association with Panama for these purposes, are not susceptible to dollars-and-cents evaluation. What is certain is that alternatives to the Treaty settlement--prospective unrest and insecurity at the Canal, the possibility of a massive military effort there, and the certainty of embittered Hemisphere relations--would be incalculably more costly to us.

In addressing this subject in a letter dated February 10, 1978, Secretaries Vance, Brown and Alexander made this point in the following terms:

"In the last analysis, the U.S. security and commercial interests these new Treaties are designed to serve cannot be measured in dollars. Under the past arrangements, the benefits that we have received from the Canal have far outweighed the costs of construction, security and the nominal annuity paid to Panama. We feel the costs associated with U.S. operation of the Canal between now and the year 2000 will be more than offset by the benefits derived from our continued use of the Canal during an orderly and efficient transition to Panamanian management, and from the continued maintenance of U.S. troops and facilities in Panama for the next 22 years."

The principal expenses incurred by the United States in carrying out the Canal Treaty will be borne by the Department of Defense. By October 1, 1979, it must relocate certain military facilities and take over the operation of schools, hospitals and certain community services from the present Canal Zone Government. This will entail a net increase in expenditures.

Based on its budget projections, the Department of Defense estimates that its net additional financial requirements through the 1984 fiscal year, as a result of the Treaty, may reach a figure of \$277 million. The Department of Defense suggests that for the remaining Treaty years there would be additional costs which might reach \$480 million. These estimates have been made on the assumption that there will be no changes in Defense elements, or their support requirements, until the Treaty has terminated. Its actual costs will, according to the Defense Department, almost certainly be significantly lower. For details, see Annex A.

Other federal agencies will also have additional costs. The largest of these would result from the special retirement benefits to be offered to currently employed members of the Canal work force. These expenditures would compensate employees whose careers are interrupted as a result of the Treaty, and would provide an incentive to others to continue to lend their skills and efforts to ensure the efficient operation of the Canal.

The Office of Personnel Management estimates the cost of measures it will administer over the next 30 years at more than \$200 million in all. A descriptive table is included at Annex B.

In addition, the Department of State will need to provide consular services to federal employees who will, for the first time, be serving in territory under Panamanian jurisdiction. The U.S. Government will also have to share the expenses of the Joint Environmental Commission and the Consultative Committee, both established under the terms of the Treaty. Moreover, we must comply with the Senate's desire that we assure dignified permanent care of the remains of U.S. citizens buried in the Canal Zone. The total cost of these activities to the United States over the life of the Treaty will be about \$10.7 million. Finally, an amount not to exceed \$5 million will be required for a special reserve account to be maintained by the United States for the Foreign Military Sales portion of the economic and military cooperation program which was concluded separately from the Treaty, though at the same time. Details are provided in Annex C.

While an effort has been made to estimate as accurately as possible the size of the outlays involved, this becomes progressively more difficult after the first few years of the Treaty's life. The variables include not only the rate of inflation over the years but also the uncertainties in forecasting the relative costs of various types of services, or the intentions of individuals--for example, with respect to the rate of retirement of Commission personnel as the years go by.

Accordingly, the estimates contained in this Memorandum are subject to a sizable margin of error. For comparability purposes, costs are expressed in terms of constant dollars, as of Fiscal Year 1980. For Department of Defense costs, budget figures for the planning cycle FY 79-84 have been used, and a constant level of expenditures at the 1984 figure has been assumed for the remainder of the life of the Treaty.

It should be recognized that the figures are on the high side. No allowance is made, for example, for a possible reduction in the size of the U.S. military presence at the Canal, which might reasonably be expected to take place as the United States and Panama create and strengthen the structure of association and trust under which the Canal should operate in the future. Nor is there an allowance for the introduction of new cost-cutting measures.

Finally, there will be savings under the Treaty as well as expenses. \$1.8 million of the current \$2.3 million annuity currently paid to Panama is funded from the US Treasury as part of the Department of State appropriation. This payment will now cease. Over a 20-year period, this will result in a \$36 million saving. Similarly, when Panama assumes the operation of Panama's air traffic control system, five years hence, the saving to the United States will amount to \$5 million annually--a total of \$75 million for the remainder of the Treaty term.

Taking all the above into consideration, and in the light of the details included below, the level of additional appropriations for Treaty implementation purposes should not exceed an average expenditure of \$42 million per year, in 1980 dollars.

With the qualifications indicated above, the following table presents a summary of the anticipated net costs to the US arising from the 1977 Treaty. Details are set out in the accompanying annexes. While the totals exceed the estimates provided to the Congress in February 1978, they now reflect the best available analytical judgment in the Executive Branch. Considered on a year-to-year basis, the net outlay to the US is of the same or a lesser order of magnitude than that now expended in maintaining each of a number of major foreign base establishments in other parts of the world. It is far lower than other estimates now in circulation.

If Congress should accept the Administration's proposal to terminate the annual interest payment on the net direct investment of the U.S. Government in the Canal, the revenues of the Treasury would be reduced by approximately \$20 million per year.

Attachments:

- Table
- Annex A
- Annex B
- Annex C

Net Additional Cost Requirements to the U.S. Government,
Payable from the General Fund of the Treasury through the
Life of the Treaty*

	Amount (\$ Millions)
DOD implementation requirements:	
-- FY 1979-84	277.0
-- FY 1985-1st Quarter, FY 2000	480.0
Personnel requirements:	
-- Preferential retirement arrangements	205.0
-- Potential liability for interest on retirement benefits transferred	2.0
-- Non-appropriated fund employees' retirement	2.0
Other requirements:	
-- Consular services	3.7
-- Expenses of Joint Committees	3.8
-- Relocation of remains of US citizens	3.2
-- Foreign Military Sales Reserve	<u>5.0</u>
Gross Amount of Additional Appropriated Funds (FY 1979-99):	981.7
Less:	
Annuity payments to Panama	(36.0)
Operational cost of air navigation control and facilities	<u>(75.0)</u>
Net Amount of Additional Appropriated Funds (FY 1979-99):	<u>870.7</u>

*Early retirement estimate is costed over a period of thirty years.

DOD TREATY IMPLEMENTATION COST ESTIMATES

The Department of Defense has estimated that for the FY 1979-84 period an additional net \$277 million would be required:

	<u>FY 79</u>	<u>FY 80</u>	<u>FY 81</u>	<u>FY 82</u>	<u>FY 83</u>	<u>FY 84</u>	<u>FY 79/84</u>
Base Operations 1/	3.8	16.5	16.6	16.6	16.6	16.6	86.7
Commissary Ops 2/	.4	3.4	1.1	1.1	.7	.7	7.4
Port Operations	.1	.9	.9	.9	.9	.9	4.6
Communications	1.6	.8	.5	.5	.5	.5	4.4
Disposal of Remains	.1	.2	.2	.1	.1	.1	.8
Criminal Investigation	.1	.1	.1	.1	.1	.1	.6
Medical Operations 3/	.6	14.6	16.3	16.7	3.5	3.8	55.5
Postal Operations	.5	1.5	1.4	1.3	1.3	1.3	7.3
School System 4/	--	6.0	6.0	6.0	6.0	6.0	30.0
Military Pay	--	3.5	3.5	3.5	3.5	3.5	17.5
Military Construction 5/	40.6	6.0	13.6	12.2	.5	--	72.9
Equipment Procurement 6/	--	10.0	6.6	2.4	2.8	.8	22.6
Less Credits (Hosp. Ops) 7/	--	(7.5)	(7.5)	(6.7)	(5.8)	(5.8)	(33.3)
TOTAL	47.8	56.0	59.3	54.7	30.7	28.5	277.0

(Footnotes on following page)

The Department of Defense has projected its appropriations for the period beginning with FY 1985 and running through the first quarter of FY 2000 on a straight-line basis, i.e. on the basis of zero change from the FY 1984 level. For this purpose, the \$28.5 million FY 1984 figure has been increased to \$30 million, to include a margin for possible replacement of capital items and urgent military construction requirements. Moreover, the expenditure period has been calculated at 16 years rather than 15-1/4 years. On this basis, the Department of Defense estimates that its net additional requirements arising from the Treaty will be \$480 million for the post-FY 1984 period. It should be emphasized that this figure is highly speculative and represents, in terms of constant dollars, maximum Defense costs for the period.

Statements by the Joint Chiefs of Staff and the Commander in Chief, U.S. Southern Command, indicate that, although there are no present plans to draw down the existing military forces in Panama, factors bearing on this issue will be reviewed periodically by the Department of Defense. It is unlikely that the entire present Defense community in Panama would remain through 1999.

Footnotes to Table:

1/ The term base operations includes support or housekeeping activities, such as supply and maintenance, transportation, property repair and maintenance, and operation of utility plants and systems.

2/ Commissary patrons currently number 26,000. The number is expected to rise to 35,000 on October 1, 1979, and not to exceed that level during the five-year period.

3/ Medical population to be served is estimated at 88,500 as of October 1, 1979, dropping to 44,000 by April 1, 1982, and remaining at that level for the remainder of the period.

4/ The population of the DOD school system is not expected to vary significantly during this period.

5/ All military construction results from relocation of military units.

6/ Initial and replacement equipment related to functions transferred from the Panama Canal Company, e.g. cargo handling equipment, administrative vehicles, communications and hospital equipment.

7/ Revenue gathered as a result of medical care provided persons authorized to receive such care, but required to pay for it at established rates. These amounts exclude that portion of the revenues returned to the O&M, Army Appropriation, and include only those amounts returned to the Military Personnel, Army Appropriation and to Miscellaneous Receipts, Treasury account.

Source: Department of Defense.

PERSONNEL REQUIREMENTS1. Early Retirement Benefits

Article X(9) of the Treaty provides that the United States will seek special legislation for a liberalized early retirement program. This commitment is implemented by Sections 325 and 326 of H.R. 1716. The passage of the legislation would increase the statutory liability of the Civil Service Retirement System by \$205 million. In accordance with Section 8348(f) Title 5 U.S. Code, this liability would be amortized by annual appropriations over a thirty-year period of \$12.7 million each.

The cost estimate of \$150 million made by the Civil Service Commission in early 1978 did not include the effect of the 1978 pay increase or the cost of the liberalized benefits for Panama Canal Company and Canal Zone Government employees (mainly in health and educational facilities) who transfer to DOD because of their duties.

The details of the current estimate by the Office of Personnel Management (OPM) are contained in the following table estimated on a "static" basis:

A. Cost for employees who remain after October 1, 1979

1. Number remaining	10,093	
2. Average salary	\$13,000	
3. Total payroll (1) x (2)		\$131 (million)
4. Unfunded liability generated per dollar payroll		\$1.35
5. Increase in liability (3) x (4)		\$177 <u>million</u>

B. Cost for employees who retire immediately

1. Estimated number retiring (3 times normal annual rate)		1500
2. Average salary		\$13,000
3. Total payroll (1) x (2)		\$20 million
4. Unfunded liability generated per dollar payroll		\$1.31
5. Increase in liability (3) x (4)		\$26 <u>million</u>

C. Law enforcement officers

1. Estimated number retiring immediately		200
2. Average service	10 years	
3. Increase in liability		\$1.3 million
4. Number with less than 20 years service who remain		200
5. Estimated average time rate worked after October 1, 1979	4 years	
6. Increase in liability		\$700,000
7. Total increase in liability under special provision for law enforcement officers		\$2 <u>million</u>

Total increase in Liability (A5+B5+C7)

\$205
million

Annual payment over 30 years

\$12.7
million

*As with other estimates contained in this paper, the above calculation is made on a "static" basis.

Source: Office of Personnel Management

2. Transfer of Retirement Benefits

Article VIII(3)(c) of the Agreement in Implementation of Article III of the Treaty provides for the transfer to the Social Security System of Panama of funds equal to the amount of employee/employer contributions held for certain Panama Canal Company/Canal Zone Government employees who become employed by Panama as a result of the Treaty. This transfer is at the election of the employee. It is difficult to estimate the cost of this provision until it is known exactly how many employees are involved and how many will elect to make a transfer of their retirement contributions to the Panamanian Social Security System. It has been OPM experience that employees separated by a reduction in force, who lack the years of service for early retirement, generally request a refund of their contribution.

OPM has estimated that, if 300 employees elected to transfer their contributions, the cost of these transfers to the Social Security System, including US Government matching funds, would not be more than \$1-2 million. This is not a net incremental cost to the Treasury, since the transfer would be financed from contributions already made to the Civil Service Retirement Fund. Should interest on the employer/employee contributions be paid, the cost to the Treasury would be \$1-2 million.

3. Non-Appropriated Fund Employees

Annex C of the Agreement in Implementation of Article IV of the Treaty provides that non-US employees who are not presently covered by US Civil Service retirement, or employees paid by US non-appropriated fund instrumentalities, shall be covered by Panamanian Social Security, with contributions paid by the insured and the employer according to the rates established by the Social Security laws of Panama. The Department of Defense budget will include a one-time request for \$1.5-2 million to cover unfunded retroactive retirement annuities for non-appropriated fund employees.

4. Canal Personnel Transition Costs

The Panama Canal Company is self-financing and is required to reimburse the US Treasury from Canal revenues for that portion of the appropriations for the Canal Zone Government which is not recovered from other federal agencies. Because of this reimbursement, there will be no net impact on the federal budget as a result of the supplemental requests described below. These costs are included in the interest of completeness.

As a result of the 1977 Treaty, the Panama Canal Company and the Canal Zone Government will cease operations at the end of FY 79. In the course of phasing out their activities, some one-time personnel-related expenses will arise from the Company/Government. Separated United States Government employees will receive lump-sum payments for their unused leave. Such leave is funded for the Company but is not funded for the Canal Zone Government, an appropriated fund agency. An appropriation of \$1,930,000 has been requested for commuted leave payments to Canal Zone Government employees who will be terminated by the end of FY 79.

In addition, under the terms of their employment with the Company or Government, persons who were recruited to go to Panama to work for these agencies are entitled to have the cost of their return, including the movement of household goods and vehicles, paid by these agencies. These repatriation costs will amount to \$1,301,000 for the Canal Zone Government and \$1,672,000 for the Canal Company.

Finally, there will be some turnover among skilled employees of the Canal operation. This will lead to recruitment costs for the Canal Company of \$165,000 beyond the amount identified in its FY 79 budget.

In sum, the aforementioned items will require an FY 79 supplemental appropriation of \$3,231,000 for the Canal Zone Government and an increase of \$1,837,000 in the limitation on general and administrative expenses of the Panama Canal Company Fund.

OTHER INCREMENTAL COSTS

1. Consular Requirements. As a result of the Treaty, the U.S. Embassy in Panama will assume a number of consular-type services previously performed by the Canal Zone Government. The thousands of U.S. citizens now living in the Canal Zone will, after October 1, 1979, be residing and working in Panama. They will thus require passports, citizenship services, welfare and protection support. To cope with this increased workload, the consular staff will be increased by two U.S. officers and eight local employees at entry into force of the Treaty. Over the life of the Treaty, the increased costs will be approximately \$3.7 million.

2. Joint Committees. The U.S. will need to meet certain expenses for its participation in two bilateral groups established by the Treaty, the Consultative Committee and the Joint Commission on the Environment. These expenses will be included in the Department of State budget. The estimate for personnel compensation and travel for U.S. members of the Consultative Committee is approximately \$17,000 per year and that for the Joint Commission, approximately \$177,300 per year.

3. Relocation of Remains. \$1.7 million is included in the FY 1979 supplemental request for the Canal Zone Government, to carry out the relocation work required by the Senate Reservation to the Treaty concerning the Permanent Neutrality and Operation of the Panama Canal. Since this requirement is designed to establish a permanent American cemetery in Panama and does not relate to operation of the Panama Canal, we have requested that this expense be met from the General Fund of the Treasury. Additionally, an estimated \$1.5 million may be required in the DOD budget to cover the cost of transporting the remains of U.S. citizens from Corozal Cemetery to the continental United States, in accordance with the Senate Reservation.

4. Foreign Military Sales Reserve. Finally, there is a program for economic and military cooperation with Panama totalling \$345 million. This program, which is from the Treaty, consists entirely of loans, guarantees and credits. It includes issuance of repayment guarantees under the Foreign Military Sales Program not to exceed \$50 million over a ten-year period. Like the other parts of the program, this portion is not a grant to Panama and is not financed by the American taxpayer. Appropriations would be required only to cover ten percent of the annual program in the form of deposits in a special reserve account, as is the case with all such military credit sales. The maximum amount required for this purpose will be \$5 million.

Mr. CHRISTOPHER. Since I know this is your last question, Mr. Bauman, I would like to thank you for the courtesy of your questions and to say that my early departure does not reflect any ordering of priorities or any suggestion that this matter is less important than other matters. On a morning like this, there is not quite enough of a person to go around, and that is my problem, not that I think that this is less important than other matters.

Mr. BAUMAN. I will reserve my followup for the other members here.

Mr. HUBBARD. Thank you, Mr. Secretary.
Congressman Dornan?

Mr. DORNAN. Good morning, Mr. Christopher. In respect for your ghastly time demands this morning, I will just try and synthesize what I wanted to discuss with you down to one question.

I have a statement that I want to ask be inserted in the record at this point, to find out if we are going to be consistent on human rights.

[The following was submitted for the record:]

STATEMENT OF HON. ROBERT K. DORNAN, A REPRESENTATIVE IN CONGRESS FROM
THE STATE OF CALIFORNIA

The two new Treaties ratified by the Senate on March 16 and April 18, 1978 will have an effect for beyond bilateral relations between the United States and Panama. The Panama Canal is an oceanic "checkpoint" of great geopolitical significance. The Canal serves as a major trade route for a great bulk of strategic commodities, including oil, iron, steel and grain. Moreover, approximately 50 percent of all commerce through the Canal is in the United States trade.

As you know during the Spring of 1978, I was an opponent of the ratification of the Treaties negotiated between the United States and the Torrijos Government in Panama. I opposed the Treaties because I felt that they did not adequately protect legitimate American interests. I was likewise concerned that the Government of Panama would not operate the Canal as, in fact, the United States is doing: as a major international utility, benefitting the United States and all other users. My misgivings were grounded in the character and the ideological complexion of the regime governing the Republic of Panama.

Those concerns of a year ago have not been alleviated; they have only been deepened. Shortly after the Senate ratification of the new agreements, the Republic of Panama announced a series of new foreign policy initiatives. Panama's government announced a desire for even closer relations with the Soviet Union and Communist Bloc countries; it further attacked U.S. naval presence at the strategically crucial Guantanamo Bay and it strongly declared support for "national liberation forces" around the world. These so-called "liberation forces" are invariably Soviet-backed guerilla movements, bent upon the destruction of non-Communist or pro-Western governments.

It is clear that the new agreements between the United States and the Republic of Panama have not resulted in warmer relations. On this point, the proponents of the Treaties were woefully, disastrously in error.

The direction of the new foreign policy of the Republic of Panama was set forth in a July 19, 1978 statement by Panama's Foreign Minister Nicolas Gonzalez Revilla. I think that it is worth noting that Panamanian interests are becoming far more cosmopolitan. Not only do Panamanians favor the return of all Arab lands taken by Israel in 1967, but they wish the United State to grant "self-determination" to Puerto Rico, even though no more than 5 percent of that island's voting population has ever favored complete political independence from the United States.

How do we respond to the new Panamanian initiatives? What is the stance of our foreign policy?

It is supremely interesting that the Carter Administration has made the issue of human rights of paramount importance in foreign policy decisions. There are many of us in the House who strongly applaud this decision. In response to the President's call, the Congress has taken several steps to implement a human rights oriented foreign policy in the adoption of foreign assistance legislation. In fiscal years 1976 and 1977, we have attached amendments to foreign assistance legislation restricting

the transference of funds to governments that violate human rights. In considering the International Security Assistance Act of 1978, we have added similar restrictions—all for the purpose of protecting human rights.

Now we are called upon once again to transfer funds. This time to Panama. Are we going to apply the same restrictions? Are we going to act with consistency on this issue? Or will the issue of human rights escape us? I fear that, unless this issue is broached, the Administration will never observe the problem in Panama even if from very high altitude.

This morning I was given a copy of a report by the Organization of American States, detailing the extensive human rights violations in Panama. The respected Inter-American Commission on Human Rights reveals grave violations of human rights in that country, everything from the murder of political opponents to the torture of political prisoners, plus the ugly violation of forced labor. I have here a summary statement of the findings of the OAS Report prepared by the Panamanian Committee for Human Rights, and I ask that it be included in the record of the Hearings.

[The summary of the OAS report follows:]

The Inter-American Commission on Human Rights of the Organization of American States reports on the grave "Situation of Human Rights in Panama". Approved in June 1978, released in November and printed in January 1979, the 122 page Report gives details of torture, murder, exiling, forced labor by the National Guard, the police of the military dictatorship of General Omar Torrijos.

The Commission documents that the regime is guilty of violations of the full range of human rights. Recommendations for urgent reforms are noted in the Report. The study included a nine day "on site" visit by 3 members of the Commission, 3 staff attorneys and 2 assistants.

SUMMARY OF THE COMMISSION REPORT

Chapter 1. The Legal Framework

- Panama is a signatory to over 20 international instruments relating to human rights. Panama's 1972 Constitution provides human rights protection, but the concentration of powers in the Executive permits suspension of guaranteed human rights.

Chapter 2. The Right to Life, Liberty and Personal Security

The Report details:

- Cases of death or mysterious disappearance such as that of Father Hector Gallego (P.19-21), a Catholic priest who "had organized peasant cooperatives that affected economic interests of the Torrijos family". He was arrested by the National Guard and never seen again. "As a consequence (of his death) there were created difficult problems between the Church and the Government." In this and the many cases of death attributed to the National Guard THE COMMISSION CONCLUDES "THE GOVERNMENT OF PANAMA DID NOT CARRY OUT AN IMPARTIAL AND EXHAUSTIVE INVESTIGATION."
 - "Forced and unremunerated labor of unsentenced detainees"
 - Torture by the National Guard by such tactics as:
 - ..electric shocks to vital parts of the body, ears, genital organs and the anus (as in the case of Leopoldo Aragon, P. 30)
 - ..holding prisoners incommunicado for an indeterminate length of time
 - ..physical beatings of male or female prisoners, most often with a hose
 - ..fondling of private parts of female prisoners and threats of rape
 - ..subjecting prisoners to long interrogation periods while depriving them of rest, sleep, food or water
- "THE COMMISSION CONCLUDES THAT THE ABOVE CHARGES ARE SUBSTANTIATED."

Chapter 3. The Right of Protection from Arbitrary Arrest - Habeas Corpus

- Writs of habeas corpus are denied or avoided by keeping prisoners incommunicado. Unless someone outside knows of his predicament, a writ is an inaccessible remedy (as in the case of Eusebio Marchosky, P. 32). THE COMMISSION CONCLUDES "ARBITRARY ARRESTS HAVE OCCURRED ...THE PROTECTION OF HABEAS CORPUS HAS BEEN INEFFECTIVE."

Chapter 4. Right to Due Process and a Fair Trial

- The Constitution guarantees trial according to law, except that public officials may fine or arrest anyone who insults them or who is in contempt of their authority.
- "The lack of due process and a fair trial is very serious because the police night judges play a very important role in the criminal justice system of Panama." 46% of the 547 sentenced prisoners on the penal Island of Coiba had been sentenced by police night judges. Summary justice is illustrated by the fact that 98.5% of those had been arrested and sentenced the same night ("10% sentenced apparently for nothing more than "suspicion"")

(over)

since 1903 all patriotic panamanians have desired a new canal treaty... today's first concern is restoration of democracy and human rights

Of the total sentenced in 1977, almost 50% were sentenced in November when the Coiba penal colony requires harvest labor. "None of the 251 appeals made were effective."

- American citizens are arbitrarily arrested, jailed without trial, held incommunicado, habeas corpus denied, jurisdiction shifted, judicial orders illegally countermanded by the Chief of the Secret Police. The Report cites, as an example, the case of an American, Cassandra Lee Gosler, (P. 60-66), who was imprisoned for more than 6 months without trial, accused of international drug traffic. She was never tried but eventually freed. THE COMMISSION CONCLUDES "THE CASE OF CASSANDRA LEE GOSLER CORROBORATES ALLEGATIONS THAT:
 1. THE LEGAL PROCESS IS NOT RESPECTED
 2. THE JUDICIARY AND THE PUBLIC PROSECUTORS DO NOT HAVE COMPLETE INDEPENDENCE OF ACTION and
 3. IN SOME CASES, THE NATIONAL GUARD DISREGARDS THE LEGAL PROCESS AND ATTEMPTS TO IMPOSE ITS WILL UPON THE COURTS AND PROSECUTORS."

Chapter 5. Right to Freedom of Investigation, Opinion, Expression and Dissemination

- Freedom of expression is still "given with an eye dropper". The restrictive self-censorship Decree 343 was cancelled, in a cosmetic gesture, but it was soon replaced by Law #8, which among other improprieties, requires licensing of all newsmen.
- The Report cites crackdowns on independent media and commentary; i.e., the stoning of radio station "Impacto"; the arrest and exile of its owner; shutdown of the station and arrest of employees. Earlier dictatorship threats to Radio Impacto had been triggered by its "coverage of student strikes against communist influence".
- Press is controlled by the dictatorship either by its ownership by members of the government or by business associates of the dictator. This results in "a uniform expression of the government's position", "absence of other points of view and a tendency to manipulate the news", and "intimidating and denigrating persons considered as opponents of the government". THE COMMISSION CONCLUDES THAT THE RIGHT OF INVESTIGATION, OPINION, EXPRESSION AND DISSEMINATION WOULD BE SUFFICIENTLY PROTECTED ONLY "IF INTERPRETED BY AN INDEPENDENT JUDICIARY".

Chapter 6. Right of Assembly and Association

- "In today's Panama, labor groups are semi-officially forced to become part of the Federacion Sindical, a communist controlled labor federation created by the government to control organized labor. Independent labor groups fail to get favorable action on union matters at the Labor Ministry. New unions are not given the legal recognition or denial required by law. Professions (those) requiring license(to work) can only get renewals through government recognized unions."
 - "Some political parties continue to exist and to hold meetings, but without their legal character they are subject to suppression at any time, and they cannot participate in elections as parties."
- THE COMMISSION CONCLUDES "THAT THE GOVERNMENT OF PANAMA HAS EMPLOYED FORMAL AND INFORMAL MEANS THAT MAKE THE PARTIES FEEL INSECURE AND INHIBIT THE RIGHT OF ASSOCIATION."

Chapter 7. Right to Residence and Movement

- Although the Panama Constitution specifically prohibits exile of Panamanian citizens, hundreds were exiled by threats or force.
- Some exiles were allowed to return, but there was no general permission until April 14, 1978. Since then, the fact that many exiles fear to return or only make occasional visits to their homeland suggests their apprehension is based on the trumped up criminal charges still pending against them, and that there is no safety for dissidents under the continuing structure. THE COMMISSION "HAS TAKEN NOTICE OF THE RETURN TO PANAMA OF SOME OF THE EXILES".

Chapter 8. The Right to Vote and Participate in Government

- Gerrymandering (P. 108) results in the regime's self-perpetuation. Only 8% of the electorate --in sparsely, easily controlled rural districts-- elect sufficient representatives so that by themselves they elect the President of the country.

- Under the dictatorship, the legislature (Assembly) has lost or had drastically limited its check on the Executive, power of approval, investigatory or censure powers, appointive or judicial powers and power to enact legislation.
THE COMMISSION CONCLUDES "THE AVERAGE CITIZEN MAY HAVE AN OPPORTUNITY TO PARTICIPATE IN GOVERNMENT THROUGH APPOINTMENT, BUT HIS PARTICIPATION THROUGH SUFFRAGE COUNTS FOR VERY LITTLE."

THE REPORT MAKES STRONG RECOMMENDATIONS TO THE GOVERNMENT & THE PANAMANIAN PEOPLE

1. "insure effective independence of the judiciary and instruct officials to comply expeditiously with judicial order."
2. Protect persons in custody from "physical abuse", with particular efforts .."to prevent sexual abuse of women".
3. "Apply strictly...the norms prohibiting forced labor..."
4. "Provide persons accused of criminal offenses with adequate means to prepare and conduct their defense" and "elimination of the night court proceedings which permit jailing without ...opportunity to prepare their defense".
5. Implementation of international and Constitutional provisions and thus prevent exiling and expatriation of Panamanians.
6. "to take steps which would allow judicial review of cases involving persons convicted by administrative action under Decree Law 342."
7. "Guarantee "rights" to organize and assemble for peaceful political purposes" and dissemination of views..."
8. "apply generally recognized norms for classification and separation of persons in custody."
9. "relieve existing congestion in detention centers and prisons and to assure availability of adequate medical facilities...particularly on Coiba Island."

COMMENTS - AND - 1978 VIOLATIONS SUBSEQUENT TO THE REPORT

The Commission Report confirms the grave disparity between guaranteed human rights under Panama's Constitution and the systematic violations and denials of those rights by the Torrijos regime.

The Government of Panama, responding to the Commission's Report, takes issue with the cut-off date of June 1, 1978. It contends that thereafter changes have taken place. However the June 1st date, by strange coincidence, leaves unreported a shocking series of repressive and regressive violations which began the next day

June 2 with the stoning of Radio Mia by a government instigated group. Reported
1978 reason and timing for the attack was the station's commentaries on increasing communist activities.

June 14

Newsweek

Published by Newsweek, Inc.
The Washington Post Company
Katharine Graham, Chairman of the Board

Last week's violence erupted when students who support Torrijos—and whose leaders are paid out of state funds—attempted to break up a meeting of law students opposed to the treaties. The clash turned lethal when the pro-government students, joined by undercover agents of the G2, Panama's secret police, opened fire with small arms. As the fusillade continued, a gray pickup truck sped past the melee and a black-clad man crouching in the back sprayed the anti-Torrijos students with bursts from an Israeli-made Uzi sub-machine gun.

"This country is finished," said a housewife who supports Arias's call for a return to democracy. "If Torrijos and the Guardia Nacional [the army] are willing to murder students two days before Jimmy Carter arrives, they'll hunt us down like dogs after he leaves." Arias himself told NEWSWEEK that a national committee uniting the country's numerous opposition factions had been formed. "Panama's problems are more economic than political," he said. "But the first step is to get rid of Torrijos ... He's basically a policeman who has found himself in power. It's too much for him." Arias charged, "so he takes refuge in drinks and drugs and women."

INTERNATIONAL

June 26, 1978

June 16 In the village of Capira 12 supporters of former President Arias' Panamenista Party are arbitrarily arrested. Taken to the National Guard station, they are brutally tortured. One, Roman Rivera, was murdered. Rodolfo Bravo, near death, was finally hospitalized. This has become the Inter-American Commission's Case # 2936.

June 29 The Panamanian Catholic Bishops Conference issues a Pastoral Letter on "The

(over)

"The Situation of the Country". It condemns, among other government action, the brutal slaying of University students on June 14; the arrest and torture of the group of countryfolk at Capira; the fact that "certain Marxist elements speak not only for the government but for the whole nation". The Letter called for an open investigation of the above matters and for a correction of the serious defects of the structure of government which denies liberty and rights.

Though the Commission's Report touches on religious freedom, the report cuts off before the Pastoral Letter, nor does it cover the brief anti-semitic outburst (which Archbishop McGrath condemned from his pulpit). The anti-semitic incidents and press comments followed immediately after the April 16, 1977 signing of the Torrijos-Khadaffi "Mutual Support Treaty" in Libya, which Panama ratified in October 1977.

July The recurring pattern of illegal arrests of members of the media and of students continues.

August A repetition of the national election mockery in which political parties are denied participation.

September The Panama Government, in a letter to the O.A.S. Commission, acknowledges National Guard Culpability for the tortures and murder of Case # 2936; promises trial of the guilty, but exonerates commissioned officers in advance.

October The newly elected National Assembly predictably elects Torrijos' selection for President of the country. Omar Torrijos remains Commander in Chief of the National Guard.

It is clear from the June through October actions of the Torrijos regime that there is a pattern of recurring outbursts of gross violations of human rights by murder, torture, arrests and threats, while simultaneously there is a continuing repression of rights to a free press and political freedom.

The Commission's Report Corroborates the Panamanian Committee for Human Rights reports and testimony before Congressional committees on 5 occasions. With this official substantiation, various questions are raised:

- ✓ 1. Has faulty intelligence produced the distorted and often inaccurate Human Rights Reports and testimonies by the U. S. Department of State, thus allowing the Panamanian dictatorship to solidify its position?
- ✓ 2. Will Section 660 of the Foreign Assistance Act be enforced by this Congress? The section prohibits U. S. support for police and prisons. How can other denial of support for a repressive government help the freedom loving Panamanians in their struggle to regain their former democracy?
- ✓ 3. What measures can be taken to protect the civil and human rights of U. S. citizen employees of the Panama Canal from the arbitrary and capricious justice of Panama's present dictatorship?

Copies of the Inter-American Commission on Human Rights of the Organization of American States "REPORT ON THE SITUATION IN PANAMA" can be obtained by writing to O.A.S. Publications Dept.

1725 I St., Washington, D.C. 20006

Individual copies by phoning The Commission at 202-382-8765

Thank you, Mrs. Chapman

Mr. DORNAN. One of the major things that I have been proud of in our State Department, under your administration, and maybe one of the only things that comes to mind immediately, is the emphasis on human rights.

I wonder if you have seen the report on the situation of human rights in Panama put out by the General Secretariat of the OAS, the Organization of American States. Have you seen this green document, sir? [Indicating.]

Mr. CHRISTOPHER. I looked at that in connection with the preparation of this year's human rights report on Panama. I cannot say that I am totally familiar with it, but I know the document exists and I did look at it when I was reviewing the report on Panama.

Mr. DORNAN. Well, I think that the document makes very, very serious allegations, everything from forced labor, which is certainly a peculiar one in Panama given the amount of American labor that goes into the maintenance of the canal, and the use of contract labor from both Colon and the Panama City area, and the fact that we have tried to make amends for the gold and silver—peculiar payments that we made in the past, with a discriminatory pay scale that started in the early part of this century.

I think that if you look at, not only the forced labor violations documented in here, but also the murder of political opponents. And then, of course, there is the ugliest thing on the face of the earth today, the torture of political opponents, although murder is a terminal torture. I think that the administration, in the interest of being consistent and fair, is going to have an embarrassing year in our State Department as we apply the feet of the Panamanian Government to the fire to clean up their act, given our unusual bilateral relationship with Panama.

Mr. CHRISTOPHER. Mr. Dornan, I appreciate your asking that question as it is in one of the areas in which you say you are in sympathy with our policy.

As I recall the report that you referred to, the OAS report, although they do point to a number of past abuses as well as some current ones, that report, like other evaluations of the situation in Panama, reflects a marked improvement in Panama in the most recent times.

I do not think I ought to let the reference to torture go by without saying that in our most careful judgment, torture is not the policy of the Panamanian Government at the present time, and we have found no incidence of torture during the year 1978.

Although we feel the human rights situation in Panama is improving, there is room for improvement there, just as there is in the United States and all across the world. We will continue to work with that problem, just as we do with other countries. I think the legalization of the political parties and the other democratizing aspects over the last year are favorable trends, but I do not gainsay your point that there is a distance to go.

Mr. DORNAN. Mr. Christopher, one final point. The very distinguished gentleman from Illinois who was the chairman of this subcommittee for several years, Mr. Ralph Metcalfe, expressed great concern in his many trips down there, and I accompanied him on two of them, with the racial bigotry in that area, particularly against the black workers on the Atlantic side of the zone

who were descended from the West Indians that helped build the canal.

I hope the Department will pay particular attention to the fact that when we depart, the black citizens of Panama feel that they are really going to get short shrift in the employment area. Thank you very much.

Mr. CHRISTOPHER. We will certainly take into account that comment, Mr. Dornan.

Mr. HUBBARD. Thank you, Congressman Dornan. Now, Congressman Bill Carney of New York?

Mr. CARNEY. Mr. Chairman, I have no questions.

Mr. HUBBARD. I have only one question, Mr. Secretary, and it will be brief. This is a followup, actually, to Congressman Bonior's good question about the Board of the Commission.

The Constitution in article I points out that officers of the United States cannot accept emoluments, gifts, or titles from a foreign government without the consent of Congress. The question is, will the Panamanian Board members of the Commission be "officers of the United States" in the sense of article I of the Constitution. If they are, is there not a need for a provision in the implementing legislation to except Panamanians on the Board of the Panama Canal Commission from this provision of the Constitution?

Mr. CHRISTOPHER. We have considered that legal question, Mr. Chairman, and we believe that they will not hold an office within the meaning of the article of the Constitution to which you refer, and so I do not think that problem will arise.

Mr. HUBBARD. Are there other questions from any members of the subcommittee?

[No response.]

Mr. HUBBARD. If not, thank you very much, Deputy Secretary of State, Warren Christopher, for your statements, answers to our questions, and for being with us this morning.

Mr. CHRISTOPHER. Thank you, Mr. Chairman. The written questions that you have submitted will be presented to the committee in a very few days.

Mr. HUBBARD. Thank you very much.

[The material to which the witness makes reference is as follows:]

QUESTIONS OF COMMITTEE ANSWERED BY STATE DEPARTMENT

1. What role is expected to be played by Panamanian nationals and agencies with respect to the Panama Canal Commission? How are Panamanian officers and other officers of the Commission affected by the provisions of the Constitution regarding officers and employees of the U.S.? What will be the relationship between the Panama Canal Authority and the Commission? Will the Panama Comptroller General be involved?

Answer: The Panama Canal Authority, an agency of Panama established on September 19, 1978, has been given the general responsibility of coordinating the actions of various components of the Government of Panama concerning the exercise of rights and the discharge of responsibilities under the 1977 Treaty. The Authority will deal with U.S. agencies, including the Panama Canal Commission, on matters related to the Treaty. The Authority has no formalized legal relationship with the Commission.

Panamanian nationals will participate in the operations of the Commission in several ways. Article III provides four Panamanians will serve, with five Americans, on a Board established by the Treaty to supervise the Commission, and that a Panamanian national will serve as Deputy Administrator until 1990. Thereafter, the Administrator will be a national of Panama. Panamanians will also be employed at all levels by the Commission.

Panamanian members of the Board will be formally appointed by the President, but they will not, in a functional sense be "officers" of the United States. Rather, they will

be representatives of the Government of Panama. It is not contemplated that they would receive a salary for their membership on the Board. They will be proposed for appointment by Panama. Although we anticipate a process of informal consultation regarding prospective nominees, the United States has no right under the Treaty to refuse to appoint persons proposed by Panama nor does the United States have a unilateral right to remove these persons from office. The Panamanian directors will be chosen by the Government of Panama to represent its point of view on the Board.

Under the Treaty, Panama has the right to propose for membership officials of its Government if it chooses to do so. As unsalaried representatives of Panama, the Panamanian members are not considered as holding an "office" under the United States within the meaning of Article I, Sec. 9 Cl. 8 of the Constitution. Similarly, as unsalaried foreign representatives, they will not be employees or officers of the United States as those terms are used in federal conflict of interest statutes and regulations.

Panamanian nationals who are employed by the Commission, including the Administrator and Deputy Administrator, will be employees of the United States. As such, they are prohibited from simultaneously holding an office in or being employed by the Government of Panama. They will be subject to federal

conflict of interest statutes and regulations.

It is intended that Panamanian nationals employed at higher levels by the Commission--including the Deputy Administrator and . . . after 1989 the Administrator-- should be in a position to give their colleagues in the Canal enterprise insight into Panama's points of view. Once decisions have been reached, however, it will be their duty to work toward the implementation of those decisions. They will be expected to carry out their duties with the Commission fully and faithfully. They are subject to removal by the United States.

The Panamanian statute creating the Panama Canal Authority (attached) appears accurately to reflect the respective responsibilities of Panamanian Board members and the Deputy Administrator, and the Administrator (after 1989). Panamanian Board members are subject to the instructions of the Authority. The Authority is empowered to furnish advisory services and technical assistance to the Deputy Administrator and Administrator, but has no authority to instruct or direct them in the discharge of their duties.

We are unaware of any formal role assigned to the Comptroller General of Panama in connection with the Panama Canal Commission. The Comptroller General is authorized to

audit the accounts of the Panama Canal Authority in accordance with normal practices. It is likely that the Comptroller General's office will be involved in auditing the cost of providing public services under Article III (5) of the Treaty.

LS-69111
WD/
Spanish

Law No. 66

(September 19, 1978)

Establishing the Panama Canal Authority

The National Legislative Council hereby decrees:

Article 1: An autonomous entity of the State named the Panama Canal Authority (hereinafter referred to as the Authority) is hereby established with juristic personality, its own property, and autonomy in its internal management, and subject only to the policies and guidance of, and inspection by, the Executive Branch and to auditing by the Office of the Comptroller General of the Republic. For the purposes of this Law, the Executive Branch shall exercise its functions through the Ministry of Foreign Relations.

Article 2: The principal objectives of the Authority are:

(a) To coordinate with the competent authorities and entities the adoption and implementation of measures to exercise the rights and carry out the responsibilities of the Nation under the Panama Canal Treaty of 1977 and its related agreements (hereinafter referred to as the Treaty);

(b) To coordinate with the Panamanian and United States entities and authorities such steps as may be necessary to facilitate the exercise of Panamanian jurisdiction in the territory known as the Panama Canal Zone (hereinafter referred to as the Canal Area) upon reintegration of the rest of the national territory;

(c) To receive from the authorities of the United States of America all property which, according to the Treaty, is to be turned over to the Nation, incorporate it into the national patrimony and make it available for purposes of national development;

(ch) To assume the administration of programs and public services which, according to the Treaty, are to be carried out by the Nation;

(d) To participate in the Panama Canal Commission established by the Treaty;

(e) To study the feasibility of a sea-level canal and evaluate the studies already completed. The Authority may carry out or contract such studies on its own or through an agreement with the Panama Canal Commission or other agency of the Government of the United States of America;

(f) To determine what studies, including on-site studies, may be necessary to reach a final decision on the possible construction of a sea-level canal or the modernization of the existing one, bearing in mind as principal consideration the economic and social development, security, and health of the Panamanian population;

(g) To study the problems of maintaining and operating the existing lock-type canal and its remaining lifetime as an efficient and profitable interoceanic waterway; and

(h) To agree with the Panama Canal Commission or such agency as the United States of America may designate with the approval of the Ministry of Foreign Relations upon the identification, with geographic coordinates and maps, of the areas which the Republic of Panama will allow the United States of America to use for the purposes of the Treaty.

Article 3: In order to carry out its responsibilities the Authority shall have the following particular functions:

(a) To provide advisory services, technical assistance and administrative support to the Executive Branch in the establishment of policies and the adoption of measures or regulations bearing on implementation of the Treaty through planning, coordination, administration, and execution of plans, programs, and activities;

(b) To serve as means of communication and liaison between Panamanian and United States agencies in the implementation of the Treaty;

(c) To provide custody of, participate in the administration of, or directly manage, in accordance with policies established by the Executive Branch, land and water areas, activities, installation, and movable or real property included in the present Panama Canal Zone and the hydrographic basin of the Panama Canal that are to revert to the Nation under the Treaty, until the time of authorization of their transfer to other natural or juristic persons under public or private law or by order of the Executive Committee of the Authority, or by virtue of laws to be enacted.

(d) To promote, guide, administer, carry out, or take part in, in association with other persons or entities under public or private law, economic activities, public services, or any other type of activity or service assigned to it in the areas comprising the Canal Area and in the hydrographic basin of the Panama Canal, as decided by the Executive Branch.

(e) Ensure the development of the Canal Area and the hydrographic basin of the Panama Canal consistent with standards that take full advantage of their geographic position as a fundamental natural resource of the Nation;

(f) Ensure the protection and conservation of the privileged status of the fauna, flora, and environment of the Canal Area and the areas of the hydrographic basin of the Panama Canal, in order to bring about development of educational, recreational, touristic, and scientific activities within them;

(g) To grant licenses, permits, and concessions for use of lands, waters, and installations, the exercise of economic and commercial activities, and services of a public or any other nature in the canal Area and the hydrographic basin of the Panama Canal;

(h) To furnish advisory services and technical assistance to the Deputy Administrator of the Panama Canal Commission until December 31, 1989, and to the Administrator of said commission beginning on January 1, 1990, in matters pertaining to the management, operation, maintenance, and improvement of the Panama Canal;

(i) To give instructions, in accordance with policies to be established by the Executive Branch, governing the actions and votes of the Panamanian representatives on the Board of Directors of the Panama Canal Commission, the Consultative Committee and its Subcommittees, the Joint Commission on the Environment, the Coordinating Committee and its Subcommittees, the Combined Board, and the Joint Committee and its Subcommittees, established by the Treaty;

(j) To receive reports from the Panamanian representatives to the bodies specified in the preceding subparagraph, evaluate them, and submit its recommendations to the Executive Branch in due course;

(k) To perform any other functions assigned to it by the Executive Branch or the Law.

Article 4: The Panama Canal Authority shall have the following economic responsibilities:

(a) To contract loans and assume obligations with Panamanian, foreign, or international organizations, subject to the approval of the Cabinet Council;

(b) To issue bonds, shares, and other securities subject to approval by the Cabinet Council and to place them either in the national territory or abroad, with the understanding that they shall be governed by the same conditions as those applicable to Government securities;

(c) To promote the establishment and development of private or mixed enterprises by providing guarantees, offering leases, or employing any other means in the Canal Area and the hydrographic basin of the Panama Canal;

(d) To gain equity in private or mixed enterprises by acquiring shares or other securities issued by them in the Canal Area and the hydrographic basin of the Panama Canal;

(e) To manage directly, in accordance with instructions from the Executive Branch, State enterprises engaged in production, in economic, commercial, or manufacturing activities, or in the provision of public services in the Canal Area and the hydrographic basin of the Panama Canal;

(f) To purchase, sell, or lease property of any kind or enter into negotiations in respect of such property; to hire specialized technical personnel, undertake construction projects, and plan or implement its programs pursuant to legal provisions in force or decisions of the Executive Branch with a view to optimal development of Panamanian natural resources useful for transit purposes;

(g) To establish rate schedules for services rendered by it; and

(h) To carry out any other responsibilities assigned to it by the Executive Branch or the Law.

Article 5: The Authority may perform its functions and responsibilities directly or through organizations already in existence or to be established, in accordance with the terms set forth in such pertinent agreements as it may conclude.

Article 6: The Nation shall be jointly liable for obligations entered into by the Authority.

Article 7: The Panama Canal Authority shall be directed and administered by an Executive Committee and a Director General and a Deputy Director General and shall have the administrative units necessary to carry out its responsibilities.

Article 8: The Executive Committee shall be composed of six members, namely:

(a) The Minister of Foreign Relations or an official appointed by him;

(b) The Minister of Planning and Economic Policy or an official appointed by him;

(c) The Minister of Finance and Treasury or an official appointed by him;

(d) The Director General of the Authority; and

(e) Two persons named by the Executive Branch.

The Executive Committee shall be chaired by the Minister of Foreign Relations.

Article 9: The Executive Committee shall meet in regular session at least once a month and in special session when convened for that purpose by the Director General or two of its members. The decisions of the Executive Committee shall be taken by majority vote.

Article 10: The Executive Committee's functions and responsibilities are the following:

(a) To approve the general policies, projects, and plans of the Authority in accordance with Executive Branch guidelines;

(b) To propose to the Executive Branch, subject to approval by the Director General of the Authority:

1. The transfer of activities, installations, lands, and waters to the appropriate organizations or entities in order to ensure their best possible utilization in the overall development of the Nation;

2. The precise delimitation of the dimensions and boundaries of the areas of lands and waters transferred to Panamanian organizations or entities;

3. The establishment of rights-of-way or other rights in respect of real property as necessary to fulfill its responsibilities;

4. The development of economic activities or activities serving a public purpose in the areas comprising the present Panama Canal Zone and the hydrographic basin of the Panama Canal, and the form that the State's participation in such activities should take;

5. Regulations governing the use of lands, waters, and installations in the areas comprising the present Panama Canal Zone and the hydrographic basin of the Panama Canal;

6. Policies relating to the participation of the Panamanian members of the Board of Directors of the Panama Canal Commission, the Consultative Committee and its Subcommittees, the Joint Commission on the Environment, and the Coordinating Committee and its Subcommittees, as well as instructions to be followed by them;

7. Determination of the political-administrative subdivisions of the areas comprising the present Panama Canal Zone;

(c) To establish the remuneration or emoluments to be received by its members for their work;

(d) To approve the draft of the Annual Budget of Income and Expenditures and the Special Expenditures submitted by the Director General;

(e) To authorize the sale, alienation, exchange, or transfer of movable or real property of the Authority exceeding B50,000 in value;

(f) To authorize contracts, loans, or bond issues on the part of the Authority intended to finance activities and projects undertaken in fulfillment of its responsibilities, subject to the authorization of the Council of the Cabinet;

(g) To authorize proceedings, transactions, and contracts entered into by the Authority and involving amounts in excess of B500,000;

(h) To appoint an official who shall replace the Director General during his temporary absences, leaves, or vacations, and

(i) To approve the regulations necessary for due performance of its responsibilities under this Law.

Article 11: The Director General of the Authority shall be appointed by the Executive Branch. He shall be the former's legal representative and he may delegate it (the representation) for specific cases. He shall be responsible for the entire administration of the Authority and he may carry out all types of operations and enter into all types of proceedings, agreements, or contracts, subject to the authorization of the Executive Committee in matters pertaining to this Law.

Article 12: In order to be Director General, a person shall: (a) be a Panamanian citizen, and (b) not have been convicted of a crime against the commonwealth.

Article 13: The following shall be the functions and responsibilities of the Director General:

(a) To prepare and submit for approval by the Executive Committee the draft budget and his Annual Report of Activities;

(b) To submit to the National Assembly of Representatives, the National Executive Branch, and the Executive Committee an annual report and such reports as they may request;

(c) To appoint and set up such advisory, consultative, and coordinating organs as it deems appropriate;

(d) To appoint, transfer, promote, suspend, separate, or discharge subordinate personnel as prescribed by the rules and regulations of the Authority;

(e) To conclude any contract, agreement, transaction, proceeding, or operation entered into by the Authority involving an amount not in excess of B500,000.

(f) To conclude service and technical assistance contracts;

(g) To sell, alienate, exchange, or transfer movable or real property of the Authority not exceeding B50,000 in value;

(h) To perform any other functions and responsibilities specified in the Law or the rules and regulations of the Authority or authorized by the Executive Branch or the Executive Committee.

Article 14: The patrimony of the Authority shall consist of:

(a) All movable and real property that is to revert to the Nation under the Treaty and Related Agreements except when such property may be rightfully claimed by another public or private person under the Law;

(b) Such inheritances, donations, or bequests as it may receive, which items shall be added to its inventory;

(c) The proceeds of any shares, bonds, negotiable instruments, and other securities issued by it;

(d) Subsidies received by it from the State;

(e) Income and fees received by it for services rendered and for the direct or concessionary management of activities carried out by it; and

(f) Any other property or possessions authorized by law, by the rules and regulations; or by the Executive Committee.

Article 15: The Authority shall have summary jurisdiction which shall be exercised by the Director General, who may delegate it to other persons serving the agency.

By virtue of said summary jurisdiction, the Authority shall have right of execution when in possession of auditor's certificates relating to outstanding obligations payable to it.

Article 16: The Panama Canal Authority shall be exempted from payment of any category or type of taxes, assessments, duties, charges, or fees other than Social Security, Educational Security, and Workmen's Compensation premiums.

The Authority shall enjoy all facilities and privileges which the procedural laws grant to the Nation in any judicial proceedings in which it is a party.

Article 17: Without prejudice to the functions entrusted by the Constitution to the Office of the Comptroller General of the Republic, the Authority may have its own auditing system.

Article 18: Public entities shall carry out their missions in the area comprising the (Canal) Area and the hydrographic basin of the Panama Canal in coordination with the Authority and shall provide it with any cooperation which it may require in the exercise of its functions.

Article 19: The following special regime is hereby established for the purchase or contracting of materials, equipment, work, or services for the Authority:

(a) The purchase or contracting of materials, equipment, work or services costing up to B10,000 may be effected by direct procurement at the best prices and under the best conditions for the Authority;

(b) The purchase or contracting of materials, equipment, work, services, or expenditures to a value in excess of B10,000 but not more than B50,000 may be effected through direct procurement by means of the system of written price quotations announced at least two days in advance, without the formalities required for public competitive bidding or pricing.

(c) For the purchase or contracting of materials, equipment, work, services, or expenditures to a value in excess of B50,000 but not exceeding B500,000, the Office of the Director General shall solicit bids in a manner decided by it and, should such bidding be declared to have lapsed in whole or in part, it shall proceed to direct procurement of any items still to be purchased or contracted.

(d) For the purchase or contracting of materials, equipment, work, services, or expenditures to a value in excess of B500,000, the Executive Committee shall, upon completion of the first round of bidding, make the final decisions, and should there be only one bidder or should all offers received have been refused or should the bidding be declared to have lapsed in whole or in part, competitive price bids shall be solicited with authorization to proceed to direct procurement of items on which no bids are received or which are declared to have lapsed.

(e) The Authority may conclude agreements with Panamanian or foreign public or private enterprises operating within or outside the territory of the Republic for the joint procurement of materials or equipment necessary for its programs of expansion, operation, and maintenance, with a view to obtaining more advantageous conditions or prices. In the case of joint procurement with foreign enterprises operating abroad, the matter shall be handled as provided for in the relevant agreement.

Article 20: The provision of Law No. 3 of January 20, 1977, shall not be applicable to the Authority.

Article 21: This Law shall enter into force upon promulgation.

Done at Panama City on September 19, 1978.

Demetrios B. Lakas
President of the Republic

Gerardo Gonzalez V.
Vice President of the Republic

Jose O. Huertas
President of the National Assembly
of District Representatives

Jorge E. Castro	Minister of Government and Justice
Nicolas Gonzalez Revilla	Minister of Foreign Relations
Luis M. Adames	Minister of Finance and Treasury (Acting)
Diogenes Cedeno Cenci	Minister of Education
Wallace Ferguson	Minister of Public Works (Acting)
Ruben Dario Paredes	Minister of Agricultural Development
Julio E. Sosa B.	Minister of Commerce and Industries
Adolfo Ahumada	Minister of Labor and Social Welfare
Abraham Saied	Minister of Health
Tomas G. Altamirano D.	Minister of Housing
Gustavo Gonzalez	Minister of Planning and Economic Policy (Acting)
Marcelino Jaen	Legislative Representative
Nilson Espino	Legislative Representative

Manuel B. Moreno	Legislative Representative
Ricardo A. Rodriguez	Legislative Representative
Rolando Murgas T.	Legislative Representative
Miguel Picard Ami	Legislative Representative
Ernesto Perez Ralladares	Legislative Representative
Sergio Perez Saavedra	Legislative Representative
Ruben Dario Herrera	Legislative Representative
Carlos Perez Herrera	Legislative Representative

Gernando Manfredo Jr.
Minister of the Presidency

2. How does the Department of State perceive the workings and role of the binational commission? Based on the bills, how will the commissions relate to the management of the Canal?

Answer: The Panama Canal Treaty and the associated Agreements in Implementation of Articles III and IV establish five bilateral commissions. They form an integral part of the coordinating and consulting mechanism visualized for the US and Panamanian Canal partnership under the Treaty.

In contrast to the US-controlled Board of Directors of the Panama Canal Commission, the bilateral commissions would serve as advisory bodies or as mechanisms for coordinating US and Panamanian activities relating to the Treaties. They are to be composed of equal numbers on each side.

The commissions and their scope of activity are as follows:

The Consultative Committee, established under Article III, Paragraph 7 of the Treaty, is to be composed of high level diplomatic representatives of each country who will advise both Governments on important matters relating to the Canal. Although the Committee will discuss matters such as employment and tolls policy, such discussions will not limit the rights of the United States under Article III to make decisions regarding these matters. The Committee has no authority to direct either Government to take or withhold any action.

The Joint Commission on the Environment, established under Article VI of the Treaty, is designed to ensure that both Governments give appropriate consideration to environmental factors in the implementation of the Treaties. Neither the Treaty nor the Administration's proposed legislation would give the Commission authority to direct either Government to take or withhold any action.

The Combined Board, established under Article IV, Paragraph 3 of the Treaty, is to be composed of an equal number of senior military representatives of the United States and Panama "in order to facilitate the participation and cooperation of the armed forces" of both countries in the protection and defense of the Canal.

The Board will coordinate the preparation of contingency plans for Canal defense, the planning and conduct of combined military exercises, and the conduct of military operations with respect to the protection and defense of the Canal.

The United States has the primary responsibility for Canal defense and will exercise this responsibility through the normal US military chain of command. Our defense responsibility and our participation in the Combined Board does not mean there would be a combined military command.

The Joint Committee, established under Article III of the Agreement in Implementation of Article IV of the Treaty,

is to be composed of one US and one Panamanian representative. It is designed as a means of carrying out the status-of-forces type provisions of the Agreement, maintaining communication between the Governments with regard to the Agreement, and resolving differences which may arise. Unresolved differences may be referred to other Government channels.

The Coordinating Committee, established under Article II of the Agreement in Implementation of Article III of the Treaty, is to be composed of one US and one Panamanian representative. It is designed as a channel for consultation and coordination between the two Governments on matters related to the implementation of the Agreement. It will provide the necessary technical interface between the Commission and Panamanian officials. Unresolved differences may be referred to other Government channels.

3. Is there any difference of understanding whatsoever between the U.S. and Panama on amendments, reservations, etc. to the Treaties?

Answer: The Government of Panama has agreed to be legally bound by the amendments, conditions, reservations, and understandings contained in the Senate's resolutions of ratification for the Panama Canal Treaties. The US and Panamanian instruments of ratification exchanged in Panama on June 16, 1978 by President Carter and Head of Government General Torrijos incorporated all of the changes made by the Senate in its resolutions of ratification of March 16 and April 18, 1978.

In addition, the Protocol of Exchange of Instruments of Ratification, signed by President Carter and General Torrijos, explicitly states that "both Governments agree that the Treaties, upon entry into force in accordance with their provisions, will be applied in accordance with the...amendments, conditions, reservations, and understandings" adopted by the U.S. Senate.

Some members of Congress have interpreted an April 25, 1978 communique of the Foreign Ministry of Panama as in effect repudiating the changes in the Treaties approved by the Senate. We regard that communique as a descriptive analysis and commentary on the Senate's changes. It does not in any way constitute a part of the legal agreement between the United States and Panama with regard to the Panama Canal Treaties.

4. What are the results of the actions of the Binational Committees to this point? What exactly has been done? What understandings and agreements have been reached between the U.S. and Panama pursuant to the Treaty? How do they relate to provisions in the legislation?

Answer: Since mid-1978 US Government officials located in Panama and the Canal Zone have been discussing plans for the orderly and efficient implementation of the Canal Treaties with representatives of the Government of Panama. These implementation discussions have taken place in binational working groups which are informal predecessors of the Coordinating and Joint Committees established under the Agreements in Implementation of Articles III and IV. A Binational Working Group, which includes nearly 30 technical subcommittees for ports, railroads, postal services, etc., (see attachment) deals with Canal Zone Government and Panama Canal Company functions and activities which will be transferred to Panamanian control on October 1. A Joint Working Group has been established to deal with military aspects of planning for implementation of the Treaties.

Neither working group has yet reached any understanding or agreements which bind either Government. However, significant progress has occurred in the orientation of Panamanian officials regarding problems entailed in the anticipated transfer of activities and functions, the identification of issues to be resolved, and the timing of tasks to be completed.

Apart from the activities of the Binational Working Group, the Governments of the United States and Panama have signed three important ancillary agreements, as required by the Panama Canal Treaties and associated agreements. One agreement, signed January 8, 1979, provides for Panama to assume responsibility, over a five-year period, for the air traffic control system in Panama now operated by the United States Federal Aviation Agency. On September 7, 1977 both Governments had agreed to commence negotiations as soon as possible on this agreement so that it would enter into force prior to the entry into force of the Panama Canal Treaty.

A second agreement, signed January 11, 1979, ensures the permanent use by the United States of a portion of Corozal Cemetery for the remains of United States citizens, under the care of the American Battle Monuments Commission. Such an agreement was envisaged in Senate Reservation 3 to the Neutrality Treaty. Section 502 of the Administration's draft implementing legislation (H.R. 1716) authorizes the appropriation of funds to carry out the removal and transfer of remains of Americans buried in the Canal Zone.

A third agreement, also signed January 11, 1979, will permit American citizens convicted of crimes in Panama, and Panamanians similarly convicted in the United States, to

serve their sentences in their own countries. This last agreement is in treaty form, as provided for in the Senate understanding attached to the Canal Treaty. It resembles similar arrangements we have with Mexico and Canada, and will be submitted to the Senate for approval.

BINATIONAL WORKING GROUPSUBCOMMITTEES

- | | |
|----------------------------|--|
| 1. LANDS AND WATERS | 10. GARBAGE, TRASH COLLECTION AND STREET
CLEANING |
| A. Surveys | |
| B. Land Use Licensing | 11. SCHOOLS |
| C. Public Facilities | 12. POSTAL SERVICES |
| D. Historical Monuments | 13. FISCAL MATTERS |
| 2. PORTS AND RAILROAD | A. Importation |
| A. Ports | 14. ROADS AND STREETS |
| B. Railroad | 15. FIRE PROTECTION |
| 3. HOUSING | 16. EMPLOYEE DOCUMENTATION |
| 4. COMMERCIAL SERVICES | 17. LICENSING AND REGISTRATION |
| 5. BUSINESS ACTIVITIES | 18. JURIDICAL |
| 6. NONPROFIT ORGANIZATIONS | 19. CLAIMS |
| 7. HEALTH AND SANITATION | 20. PERSONNEL |
| 8. SOCIAL SECURITY | 21. POLICE |
| 9. UTILITIES | 22. ENVIRONMENTAL |
| A. Power | 23. LIAISON |
| B. Communications | |
| C. Water | AD HOC FINANCIAL GROUP |
| D. Sewers | AD HOC TAXATION |

5.(a) What are the consequences of the failure to enact the implementing legislative package?

Answer: It is not possible to predict with certainty the precise consequences that would flow from a failure to enact the legislative package. In general such a failure would seriously impair our ability effectively to exercise our rights under the Treaty to operate, maintain and defend the Panama Canal.

For example, a failure to enact the legislation proposed by the Department of Defense to provide funding for the relocation of various military facilities now located in areas which will be transferred to Panama on October 1 would almost certainly degrade our defense capability in the area. It should be emphasized that a failure to provide funding for replacement facilities would not preclude the transfer of existing facilities to Panama as provided by the Treaty; it would simply mean that our military forces would be precluded from providing adequate replacements.

Another example of the adverse consequences of a failure to enact the implementing legislation would be the serious unsettlement which would occur in the Canal personnel system and the potential for a drastic decline in employee morale. The proposed legislation would provide our employees a wide range of employment protections and benefits, including an early retirement option. Failure to enact the legislation

in advance of October 1 would force employees who might otherwise intend to exercise the early retirement option to take steps to protect their continued employment rights. Thus, many senior personnel now employed in functions which are to be transferred to Panama on Treaty Day probably would exercise "bumping rights" to retain a position with the Commission. If the legislation were subsequently enacted, these employees would then be in a position to opt for early retirement. At the very least, a disruptive second round of personnel actions would be required. If the legislation were delayed beyond the point at which employees who had been bumped had in fact been terminated, vacancies in key positions could result. Such a disruption in the Canal enterprise personnel system would jeopardize our efforts to maintain Canal efficiency.

In addition to such specific administrative problems, continued uncertainty on the part of employees with respect to their protections and benefits would create increasing morale problems among the work force. Many employees might conclude that their future would be better served by seeking employment elsewhere. There could thus be losses of key personnel. Ultimately, the possibility of job actions on the part of the work force could not be ruled out under these circumstances.

(b) What steps would be taken by the United States to comply with Treaty requirements if legislation is not enacted? Specifically and in detail indicate what steps will be taken to operate the Canal and carry out terms of the Treaty.

The Administration made a conscious decision at an early point that it would not be worthwhile to address this complex and, at this point, hypothetical question.

During the Treaty negotiations, our negotiators sought and obtained a wide range of authority for the United States to legislate with respect to the operation and management of the Panama Canal. It has been our expectation both during the Treaty negotiations and subsequently that the Congress would wish to exercise this authority fully. Accordingly, we decided that we would devote our efforts to preparing and submitting for the consideration of the Congress comprehensive modifications to existing legislation covering the areas reserved to the legislative authority of the United States by the Treaty. In our proposed bill we included all the provisions we considered necessary and appropriate for the Canal operation. We have not sought to determine what legislative enactments, if any, might be required as a bare minimum to keep the Canal functioning once the Treaty enters into force.

Although it is possible that existing legislation may provide enough authority to carry on Canal operations, we

doubt that operation under such circumstances would approximate the present level of efficiency. The problems of employee morale that would arise from a failure to enact the legislation are in themselves sufficiently serious to risk a major degradation in efficiency. Thus, we continue to believe that enactment of a comprehensive and integrated legislative package is the only feasible means of ensuring that the United States will be in a position to exercise its rights under the Treaty fully and effectively. We remain confident that the Congress will share this judgment and cooperate with the Executive to protect the United States interests fully.

Obviously, if as Treaty Day approaches there were to be indications that the Congress were not prepared to exercise the legislative authority reserved to the United States by the Treaty, the Executive would have to consider ways in which United States interests could be protected in the absence of new legislation. Indeed, it would be the obligation of the Executive to take every appropriate step to assure continued United States access to the Panama Canal. Nevertheless, it seems clear that, as a general matter, any such approach would be far less satisfactory than the enactment of comprehensive legislation.

As Chairman Murphy stated in introducing his own comprehensive bill on this subject, "Whatever the terms of the legislation ultimately adopted, it is important to realize that implementing legislation must be treated expeditiously...Without any implementing legislation at the time the new Treaty arrangements enter into force, the interests of the United States in the Isthmus of Panama may be considerably impaired." We share Chairman Murphy's view that if the Executive and the Congress work closely together in the next few months, "it is anticipated that the best possible legislation will emerge."

6. What progress has Panama made to provide for meeting their obligations under the new Treaties (e.g. legislation for security under Paragraph 10, Article IX of the Panama Canal Treaty)?

Answer: On September 19, 1978, the Government of Panama established a Panama Canal Authority to centralize and coordinate Panama's implementation of the Treaty. The Authority, under the leadership of Executive Director Gabriel Lewis Galindo, has provided personnel for consultations on technical matters with counterparts in the Panama Canal Company and Canal Zone Government.

As yet the Government of Panama has not developed the security legislation provided for under Article IX, Paragraph 10 of the Treaty. However, it has formed a commission of Government legal advisers to examine those aspects of the Panama Canal Treaty requiring Panamanian legislation or regulation. The Commission is only now beginning its work and has made no recommendations.

7. What is the status of the economic agreement for loans, guarantees, etc., for \$345 million?

Answer: Our diplomatic note of September 7, 1977, envisioned an economic and military cooperation program of loans, guarantees and credits totaling \$345 million, of which \$295 million would be for economic activities and \$50 million for foreign military sales credits. The note specified that approval of specific projects would be subject to compliance with legislative and other criteria. Through an exchange of notes on September 7, 1978, the undertakings entered into force.

The status of the projected \$295 million for economic development is as follows:

- Housing guarantees totaling \$75 million were anticipated over a five-year period. A \$25 million AID housing guarantee project is expected to get underway this year to meet the shelter needs of families below the medium income level in the Panama City area.
- The Overseas Private Investment Corporation (OPIC) had planned to guarantee up to \$20 million in private capital borrowing by the National Finance Corporation of Panama (COFINA). Although OPIC authorized the guarantee, COFINA declined to enter into the program, since the World Bank had meanwhile offered COFINA \$15 million on more favorable terms.

- As visualized in the 1977 note, the Export-Import Bank provided the Government of Panama in June 1978 with a letter of intent regarding its \$200 million program for loans, guarantees and insurance. Of the \$200 million, approximately \$33,378,000 has been authorized in import programs (\$4.169 million in bank guarantees, \$2.071 million in medium term insured transactions, and \$27.138 million in short term insured transactions).
- No action has yet been concluded with respect to foreign military sales credits.

8. Under the Executive proposal, would direct payments be made to Panama without enactment of appropriations legislation by the Congress?

Answer: No. Under the Administration's bill, the Panama Canal Commission would have the authority to make direct payment from its revenues of all of its operating costs, including payments to Panama, in accordance with its annual budget. The budget of the Commission would be subject to review and authorization by Congress in the same way as the budget of the Panama Canal Company is now reviewed and authorized. As part of the Department of Transportation appropriation act, the Panama Canal Company is now authorized annually to expend its revenue in accordance with its proposed budget, subject to whatever restrictions and modifications Congress imposes.

9. What are the specific plans to protect rights of U.S. citizens under the new Treaty arrangements?

Answer: The rights of U.S. citizens may be considered in two broad categories: (a) job related rights and (b) personal rights and privileges.

With respect to employment rights, both the Treaty and the proposed implementing legislation will provide a wide range of protections. Every effort will be made to ensure that current U.S. citizen employees will be provided continued employment with the Canal enterprise or with other U.S. agencies in the Republic of Panama, in accordance with the normal principles of seniority that apply under U.S. Civil Service regulations relating to reorganizations and reductions in force. Those for whom future positions are not available in Panama will be offered employment to the maximum extent feasible with other federal agencies in the United States under a priority placement program that has already been established by the Office of Personnel Management, and which would be formalized by the legislation.

In addition, employees will be offered the option of retiring under the early retirement formula set forth in the legislation, either immediately or at any time during the life of the Treaty. We are hopeful that, by not placing a time limit on the employee's option to choose

between early retirement and continued employment, many employees will be encouraged to continue with the Canal Commission. This will permit employees to find out for themselves what conditions will exist under the new Treaty arrangement rather than make decisions based on speculation with regard to the new situation. This is one of the most important features of the proposed legislation.

There are of course additional job protections for employees who would remain with the Commission. These include the right, through employee organizations, to engage in collective bargaining under a system to be established in consultation with the unions. Such consultations have been under way for several months, and we are hopeful that a mutually advantageous system will emerge.

The Treaty also guarantees that the terms and conditions of employment for existing employees will in general be no less favorable than those now in effect. The Canal organization is now consulting with employee unions concerning the policies and procedures to be adopted for determining benefits to be afforded employees in the future.

With respect to personal rights, the Treaty and related agreements establish a broad range of privileges and immunities for United States military personnel and U.S.

citizen civilian employees of both DOD and the Canal organization, and the dependents of such persons. These include exemptions from Panamanian taxation, import duty exemptions, procedures for entry and exit into and from Panama, and a number of other specific protections and benefits of this nature, modeled after our status of forces agreements with other countries.

Special protections are also established concerning the exercise of Panamanian criminal jurisdiction over United States citizens. Military personnel and civilian employees of the U.S. forces, and their dependents, will be covered by normal status-of-forces type arrangements. In addition, during the transition period of 30 months, the U.S. will have the primary right to exercise jurisdiction over all crimes committed by U.S. citizen employees in designated areas, and will retain courts and police authority in those areas. The implementing legislation would provide in detail for the operation of the courts, and set forth the provisions of criminal law applicable during that period.

After the transition period, Panama will have the right to exercise jurisdiction over crimes committed by U.S. citizen employees of the Canal throughout its territory, but has agreed that, as a matter of general policy, it will waive its right to exercise such jurisdiction to the United States, upon our request, for crimes described in Article XIX, Paragraph Two, of the Agreement in Implementation of Article III.

The implementing agreements to the Treaty also provide specific guarantees that Americans arrested and tried in Panama will be afforded the basic standards of due process to which they are accustomed. Our authorities in Panama are currently discussing with the Panamanian Government the specific means through which these guarantees will be implemented. The Government of Panama is being extremely cooperative in this respect. In addition, we understand that Panama is preparing to organize police units for the areas in which large numbers of American employees live. Panama's intent is to develop a force with necessary qualifications to handle problems of language and cultural differences, with a view to reassuring the U.S. community that its interests will continue to be protected.

Finally, the Panama Canal Treaty provides for the conclusion of an agreement between the two countries under which citizens of one country sentenced by the courts of the other could elect to serve their sentences in their own country. On January 11, 1979, a Treaty was signed with Panama which would implement this commitment. (See also question 4.)

In addition to these specific protections of the rights of U.S. citizens under the new Treaty arrangement, we are taking a number of steps to enhance the welfare of U.S.

Government personnel in Panama. For example, we plan to increase the U.S. consular staff in order that it may provide prompt and effective consular protection to U.S. citizens. Funds for this proposed staff increase are included in the Department of State FY 1980 budget. In addition, our Embassy and other U.S. agencies are exploring with the Government of Panama steps to assure that the quality of life of U.S. citizen employees is not adversely affected by the new Treaty arrangements. This effort includes such matters as measures to ensure that private community service organizations in the Canal Zone may continue to function. Our representatives report that the Government of Panama responded very favorably to our concerns.

Mr. HUBBARD. Next, we will hear the statement of Mr. David Popper.

STATEMENT OF HON. DAVID H. POPPER, SPECIAL REPRESENTATIVE OF THE SECRETARY FOR PANAMA TREATY AFFAIRS, DEPARTMENT OF STATE

Ambassador POPPER. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, Deputy Secretary Christopher has explained in broad terms the importance of the Panama Canal Treaty implementing legislation, and what we believe to be the urgency of congressional action if the treaty is to be smoothly and efficiently put into effect.

Mr. Hansell and I would like to supplement the Deputy Secretary's statement with a more detailed discussion of the legislation.

Members of the subcommittee are, I know, familiar with the terms of the principal proposals before it, and I will not enumerate them once again. But as Chairman Murphy stated in the House of Representatives on January 15, the proposal that he, Mr. de la Garza and Mr. Hubbard, the chairman of this subcommittee, has introduced, along with that which Chairman Murphy has introduced on behalf of the executive branch, will stimulate discussion and make available to the committee alternative options in the canal matter.

Mr. Chairman, the legislation you are considering today is essential for the proper implementation of the Panama Canal Treaty. Despite the detail with which many provisions are spelled out in the treaty, its implementing agreements and other documentation, much of its content is couched in general, rather than specific, terms. In many respects, the treaty determines what shall be done, but not how it shall be done.

The implementing legislation will fill that gap for the United States. Wisely framed legislation can thus make a highly important contribution to the advancement of our political, economic, and military interests in the operation of the canal and, at the same time, to the strengthening of our relationships with Panama and in the Western Hemisphere.

More specifically, I am sure you will agree that the implementing legislation should be designed to make the conversion from the old to the new status of the Panama Canal as effective and harmonious as possible. The legislation will do much to determine how we exercise the broad rights and authority granted to the United States under the canal treaty until the year 2000. To the extent that we can do so, we will want to continue the tried and tested arrangements and procedures which have made our operation of the canal so successful over the years.

At the same time, the nature of our compact with Panama requires us to face up to the need for certain changes. Where we have been exercising virtually complete authority in an amply delineated Canal Zone, our operations will now take place under foreign jurisdiction and in a smaller territorial area. Many functions not directly connected with the actual operation of the canal will, under the canal treaty, be transferred to Panama. Others will be assumed by the Department of Defense. Further, the treaty

commits us to prepare for the assumption of operating responsibility by Panama at the end of the century.

This is the framework within which the implementing legislation must be fitted. Since that framework is embodied in a solemnly concluded treaty, we cannot legally depart from it through unilateral action, although it leaves us with broad discretion as regards legislative authority. The Nation is pledged to make the Panama Canal treaties work. In our own interest, we should make them work in the most constructive and advantageous way.

In preparing the executive branch draft of the implementing legislation, we had in mind a number of key objectives. I suggest that the proposals before us should be tested by what we would regard as their relevance to the attainment of these objectives. In no special order of priority, they are as follows:

The legislation must insure that the operation of the Panama Canal will continue to be as efficient and dependable as it has been in the past, and must enable the United States to exercise its stewardship accordingly.

It must enable us to carry out our responsibilities for the defense and security of the canal.

It must provide a framework permitting the U.S. Government to exercise its rights and fulfill its obligations under the canal treaties, coordinating its transportation, defense, commercial, financial, and foreign policy interests in canal operations.

It must protect the interests of American shippers and American consumers in economical and secure transit through the canal in all circumstances, by keeping the tolls as low as practicable.

It must also protect the interest of the American taxpayer in the operation of the canal on a self-sustaining basis, and the interest of American business and workers in ports and shipping dependent upon canal operations.

It must protect the status of the canal work force—its employment security and labor relations, its working conditions and retirement arrangements, and the rights of employees generally under the law.

It must serve to strengthen our cooperative relations with Panama in operating the canal.

It must help prepare Panama to assume responsibility for the canal in the year 2000.

It must help to insure that due regard is paid to every important environmental consideration in maintaining and operating the canal.

Finally, it must preserve the canal as a great world transportation artery open to the ships of all nations.

The implementing legislation will to a considerable extent determine how the U.S. Government organizes itself to carry out the Panama Canal Treaty.

In this regard, the treaties negotiated in 1977 are significantly different from the draft 1967 Panama Canal Treaty. Indeed, they seem to us a substantial improvement over that proposed treaty. Under the 1967 treaty, almost the entire Canal Zone and most of its appurtenances were transferred to a binational body, in which the United States had a 5-to-4 majority. The right to operate the

canal was given directly to this body, and virtually no role was envisaged for legislation by the Congress.

As you may recall, serious objections were voiced in Congress over this proposed arrangement, and in the circumstances, it is not surprising that the treaty was never approved.

In writing the current treaty, our negotiators insisted that Congress should have a continuing legislative role. The rights and authority to operate the canal are granted to the United States of America, to be exercised in accordance with the treaty. The operating agency, the Panama Canal Commission, will be a U.S. Government agency, to be constituted by and in conformity with the laws of the United States. The implementing legislation will be the keystone of our legislation controlling U.S. management of the canal. Like the treaty, it will constitute a part of the law of the land which guides the executive branch in carrying out its operational duties.

Let me discuss, if I may, some of the principal elements of the legislation.

Pursuant to rights granted it under the treaty, the United States is to carry out its responsibilities through the Panama Canal Commission, a U.S. Government agency. We envisage the Commission as a Government corporation, like the present Canal Company. H.R. 111 proposes that it be an appropriated funds agency of the U.S. Government.

Both forms of organization would be compatible with the requirements of the treaty. Both have been used in the management of the Panama Canal in the past. Both would provide for continuing oversight by the Congress of the activities of the Commission, and of the executive branch input into it. In each case, there would be an annual budget review of the Commission's activities, and thus the necessary congressional control.

In our view, there are, however, substantial advantages in constituting the Panama Canal Commission as a Government corporation. It permits greater operational flexibility and managerial efficiency. It facilitates the operation of the canal on a self-sustaining basis and the maintenance of a proven financial and accounting structure. It minimizes the shock of transition to the new treaty status, as it permits the conversion of the Panama Canal Company to the new Commission with the smallest alteration of existing practices. It thus retains the advantages of continuity and experience, at a time when the difficulties of transition are bound to be appreciable.

By maintaining the corporate form of organization, with its managerial and financial efficiencies, it will help to prepare the Panamanians to continue to operate the canal on a business basis after the year 2000.

A number of these factors were cited to justify the reorganization—initiated, I believe, in this committee—which, in 1950, established the Panama Canal Company in its present form. In our judgment, the record of the company since that date amply justifies the maintenance of the corporate form of organization in the future. Secretary Duncan, Secretary Alexander, and Governor Parfitt will, I am sure, be prepared to discuss this subject more comprehensively.

The way in which the executive branch of the U.S. Government is organized to operate the canal under the implementing legislation is also important.

We wish to continue to profit from the experience of the agencies and individuals who have so skillfully managed the canal. But at the same time, adjustments must be made so that we may fully exercise our rights and honor our commitments under the new treaties, with full regard for our overall policy objectives.

As of October 1, as I have mentioned, our officials in Panama will be functioning in a new and less expansive environment. They will be joined in an association with Panama, within Panamanian territory.

To be sure, Panama will make a minority input. But it is an input which we must assume Panama will want to exercise on a continuing basis. Thus, policy matters related to the canal enterprise will have to be considered increasingly in the context of government-to-government relations.

Accordingly, it will be essential that the U.S. Government speak with a single voice, and that our Government's posture reflect the totality of the U.S. interests. In our thinking on government organization under the implementing legislation, we have had this point very much in mind.

You will note that the executive branch bill lodges broad authority in the President to appoint the members of the Panama Canal Commission, the Administrator and Deputy Administrator, and the American members of various joint committees and commissions to be organized under the treaty. The President is made responsible for a number of other functions to be carried out by the United States in setting tolls, managing labor relations, and in other areas.

The bill has been drawn in this way so as to maintain the greatest degree of operational flexibility within the executive branch. In fact, the President intends that the Department of Defense, acting through the Secretary of the Army, shall exercise oversight over the Panama Canal Commission.

In order to insure the coordinated policy input to which I have referred, the President intends to designate as American members of the Board of Directors of the Panama Canal Commission, senior officials drawn from interested departments. The Defense representative would serve as chairman of the board. Other members would be drawn from the Departments of State, Treasury, Commerce, and Transportation. By coordinating policy guidance in advance of meetings of the Board of Directors, we could be certain that the majority role envisaged for the United States in the Board would be effectively realized.

It would not, in our view, be desirable for the implementing legislation to be unduly explicit in matters of this character. To give the Secretary of Defense the power to, and I quote, "direct" the Board, as H.R. 111, Chairman Murphy's bill, does, would appear to downgrade the function of the Board. I venture to predict that it would be badly received by Panama, as an unwarranted disturbance of the balance between the two countries so carefully worked out in the treaty provisions. The provision is not needed to

insure American control of the Commission, and it could be unhelpful.

A somewhat similar point can be made regarding the provision in the chairman's bill, based on present legislation, for the assumption of exclusive authority over the canal operation by a U.S. military officer in time of war, or when the President considers that war is imminent. This would be considered contrary to the spirit and probably the letter of the new treaties.

Under the canal treaty, the United States retains primary responsibility for canal defense, and retains the defense areas and facilities needed for that purpose for the rest of the century. Under the neutrality treaty, as it has been amended, the United States will retain indefinitely the right to insure that the canal is protected against any act or threat of aggression.

But the treaties certainly do not assume that the entire normal operational apparatus of the canal would be placed under the exclusive authority of a military officer, at U.S. discretion, whenever we might be involved in an international crisis. We do not believe that such a provision is needed, and we fear that it would, if adopted, revive old sensitivities and tend to hamper amicable operations under the new treaty system.

In still another area, we think it important not to upset the treaty balance. We believe it is appropriate for the President to appoint the Administrator and the Deputy Administrator of the Panama Canal Commission, the members of the Board of Directors, and the American members of the principal advisory commissions established by the Panama Canal Treaty. The scope and character of these posts fully warrant such a procedure.

The extent to which the U.S. officials involved should be subject to Senate confirmation is less clear, in our view. The only official of the canal organization currently subject to confirmation is the Governor of the Canal Zone, who is concurrently the president of the Panama Canal Company. That precedent might argue for similar treatment for the Administrator, while he is still an American—that is, until 1990. After that date, when the Administrator becomes a Panamanian, continuing Senate confirmation could cause difficulties.

We doubt the need for the confirmation of all the other top American officials under the treaty structure, particularly since, under executive branch plans, as the Deputy Secretary has said, a number of them would be senior officials already confirmed by the Senate in their other official capacities, or officials directly reporting to those officials.

A distinction must be made, we think, between such American officials and the Panamanian members of the Board of Directors and the Panamanian Deputy Administrator. The treaty gives the Government of Panama the right to propose these individuals for appointment by the United States. It is for Panama to determine whether or not they should be officials. It would not, we think, be proper for the United States to assume a potential power of veto over the Panamanian appointments.

Moreover, the chairman's bill provides for appointment of a Chief Engineer, at a level equivalent to that of the Deputy Administrator. Obviously, the engineering function is highly important,

but it is not clear why a Chief Engineer should be a Presidentially appointed official. The treaty does not mention this as a key post, and it is not now such a post.

Let me turn now to the question of Panama Canal tolls, if I may, Mr. Chairman.

The bills before the committee recognize the desirability of continuing to set tolls at a level which will maintain the canal on a self-sustaining basis. They also recognize that adjustments must be made in the tolls base, to reflect the altered responsibilities of the canal enterprise and to provide the Republic of Panama with a just and equitable return for the use of its territory and resources.

Both Chairman Murphy's bill, H.R. 111, and the executive branch bill, H.R. 1716, are designed to continue the operation of the canal as, in effect, a great public utility in the service of world commerce, for the benefit of canal users and of the consumers of commodities which pass through the canal. In accordance with this objective, both proposals retain the essential elements of the existing system of adjusting tolls, so as to provide for self-sustaining canal operations in a way which will compensate for inflation and take into account other variables, such as changes in the volume of traffic.

I believe there is general agreement that the current system of determining the level of tolls is a good one. There is a recognized need to shorten the leadtime period for changes from 6 to 3 months. But there are differences as to the inclusion of certain charges beyond those required to offset expenditures, including the necessary treaty payments to Panama.

The first of these differences relates to the current requirement that the canal enterprise pay into the U.S. Treasury interest on what is termed the net direct investment of the United States in the canal. Such a payment has been paid to the Treasury each year since 1951. We advocate repeal of the legislative provision for this payment, having in mind the Senate's 60th reservation to the Panama Canal Treaty, in order to hold to a minimum the increase in tolls which will take place when the treaty comes into effect.

Retention of the payment would increase the burden on users and consumers. In the special circumstance of this situation, we would regard it as unfortunate.

The same would be true of the proposal in H.R. 111 for an annual amortization payment on the U.S. net direct investment. This would impose a new and additional burden on the toll structure, not previously required. It would drive toll rates to still higher levels at the expense of shippers and consumers.

I should like to add a word with respect to the two important bilateral advisory committees established under the treaty—the Consultative Committee and the Joint Committee on the Environment. These bilateral committees form part of the coordinating and consulting mechanism created to assist in carrying out the treaty's purposes. They are to be composed of American and Panamanian members in equal numbers. While they have no decisionmaking or legislative powers, they can make a meaningful contribution to effective cooperation in canal matters between the two governments.

The Consultative Committee is designed to provide highlevel advice and recommendations to the two governments on matters of broad policy. Under H.R. 1716, the President would designate, and the Secretary of State would coordinate, the activities of the American representatives.

We view the Consultative Committee as providing an opportunity for ranking officials of the Governments of the United States and Panama to discuss policy problems, at more or less regular intervals. Committee meetings would provide a forum for the exchange of views, but would not impinge on the responsibilities of the Board of Directors or the Administrator. There would be no need for a permanent secretariat. The committee's recommendations would be carefully considered by the two governments, but need not be accepted. As thus envisaged, the Consultative Committee is, in effect, a diplomatic forum.

Under H.R. 111, the size of the Consultative Committee is unilaterally fixed at 10 members, divided equally, and the House of Representatives and the Senate would each be entitled to select two of the five American members, the President appointing the fifth. The President would also appoint the Panamanian members on recommendation of the Government of Panama. Moreover, the bill provides that any action the Consultative Committee proposes would be subject to disapproval by either House of Congress.

We doubt that these proposals would be acceptable to Panama, and we regard them as, at best, unnecessary, from the American point of view. We strongly suggest that the formulation in H.R. 1716 be retained.

The second bilateral advisory committee is the Joint Commission on the Environment. As I have indicated, we see no need for Senate confirmation of the United States members of this commission, since its function is purely advisory. Moreover, we would suggest that, while a commission composed of three Panamanians and three Americans, as provided by H.R. 111, seems eminently reasonable, the legislation should allow flexibility for a different size if the Government of Panama should make a good case for such a change.

Mr. Chairman, the comments that I have made refer for the most part to provisions contained in titles I and II of the proposed implementing legislation. While title III, dealing with employees and postal matters, will no doubt be discussed exhaustively in the House Post Office and Civil Service Committee, I should like to mention this subject briefly here.

All the bills under consideration are substantially similar in this regard. They recognize that employees who, over the years, have served the canal enterprise so successfully, and who did so under the assumption that they could continue in such employment, should not be unduly injured as a result of changes beyond their control.

Accordingly, and as foreseen in the treaty, the proposed legislation on employment incorporates a number of special benefits and protective provisions for the present work force. These guarantees against a deterioration of their terms of employment include placement assistance in other official jobs for employees who lose their positions, liberalized retirement benefits to encourage employees to

continue at their posts in the years ahead, the establishment of a new Panama Canal employment system of collective bargaining regarding employee relations, and other similar, important provisions. The intent of these measures is to protect job security. At the same time, the treaty requires the recruitment of Panamanian employees into positions that they do not now occupy. In this way, the canal work force should become virtually all Panamanian by the year 2000, without unnecessary dislocation of ongoing working conditions.

In conclusion, Mr. Chairman, I would note that H.R. 1716 recognizes that we cannot fully foresee the range of problems likely to arise as the new arrangements under the Panama Canal Treaties go into effect. We have done our best to make provision for those contingencies we can anticipate, as has Chairman Murphy's bill, H.R. 111. But prudence suggests that we should prepare for any modifications in the implementing legislation which may be desirable on the basis of experience.

For this reason, H.R. 1716 would require the President to submit proposals to the Congress, by October 1, 1981, looking toward any legislative changes needed as the canal enterprise moves from the initial transition period which will end in April 1982, to the status which will prevail until the end of the century. The proposals to be presented to Congress in 1981 would allow us to make any necessary improvements. We request the committee's support for such a provision.

Mr. Chairman, in his letter submitting the implementing legislation to the Congress, the President, in effect, expressed the hope that it might be adopted by the beginning of June. The prompt consideration your committee is giving to the subject will be most helpful in attaining this objective.

We hope the other committees concerned, in both Houses, will be equally responsive to the need for expeditious action. If the President is in a position to sign an implementing bill into law on schedule, we will have time to do all that we humanly can to arrange in advance for the far-reaching changes that will take place on October 1.

Treaty implementation will test the wisdom and the capacities of both the American and the Panamanian Governments. Both need and deserve full opportunity to prepare for implementation, on the basis of judicious and constructive provisions of law.

With your permission, Mr. Chairman, Mr. Herbert Hansell, the Legal Advisor of the Department of State, is now prepared to discuss certain legal matters involved in the implementing legislation.

Mr. HUBBARD. I trust no member of the subcommittee would object to the testimony of Mr. Herbert Hansell at this time. He is Legal Advisor to the Department of State. After his statement we can then ask questions of both Mr. Popper and Mr. Hansell to save time.

Mr. BAUMAN. Well, Mr. Chairman, I would like to pose some questions that have nothing to do with the legalities to Ambassador Popper. I have now had a chance to read Mr. Hansell's statement, and he does not touch upon costs at all, either. Now, somebody is going to answer that question before these witnesses leave

here today, and I will sit here all day, even if the rest of you want to leave.

I would like to ask the Ambassador now, if I may, Mr. Chairman.
Mr. HUBBARD. Go ahead.

Ambassador POPPER. Yes, sir, I would be happy to.

Mr. BAUMAN. You heard the question that I put to Secretary Christopher about the cost of these treaties. In reading your statement, I see only two pages devoted to this. It seems to me that it is central to what the Congress is to do in adopting implementing legislation as to whether or not the funds are going to be available out of the revenues of the canal to allow maintenance and operation. It bears directly on the question of whether or not we should continue the corporate form of the present operation, or the Canal Company, now to be called the Commission, in which they have had great latitude to spend the funds that come in in tolls, or whether we should go to the Murphy bill's suggestion that it should be an appropriated act of Congress to cover these funds.

So I am amazed that you have not given to the committee, or someone is not going to give to the committee—I gather, skimming through the rest of the statements, no one is going to explain to us how article XIII is to be carried out in terms of dollars and cents and what it will cost the taxpayers. I do read your statement on page 15 as clearly saying that the interest payment is to be dropped, and I calculate that to be a loss of about \$340 million to the American taxpayers that otherwise would have been paid. You cloak that in arguments about not raising the tolls, which is a worthy argument, but maybe it should have been told to the American people earlier.

So my first question is, and it is a specific one, is the second \$10 million to be paid to Panama regardless of net revenues. There is a first \$10 million annuity under article XIII. Is the second \$10 million, by right, theirs regardless of whether there are net revenues to cover that?

Ambassador POPPER. Under article XIII of the treaty, sir, as you have said, there is a fixed \$10 million payment which is made out of canal revenues. There is a second, contingent payment, contingent upon a surplus of revenues over expenditure. It is recognized that if there is no surplus, there will be no payment. There is a provision for recouping in future years should there be a surplus after all expenditures and costs.

So that payment would not automatically be made; it is not an automatic obligation of the U.S. Government. The Panamanians understand that if at the end of the treaty period, in the year 2000, they have not received that full contingent annuity, they will not receive it thereafter. Therefore, as I say, there is no fixed, rigid obligation, which I think is what you had in mind with respect to that second \$10 million annuity.

Mr. BAUMAN. Mr. Ambassador, what is your authority for the Panamanian understanding, when you just said that they accept that they will not receive this additional \$10 million annually? Was the former Finance Minister wrong when he said, in front of myself and Mr. Corrado last year, that Panama saw that full \$20 million, the two \$10 million authorized under article XIII, as theirs by right each year, regardless? Was he wrong or not? And what is

your authority? Who in the Panamanian Government has changed the former minister's position, which he publicly stated before their assembly?

Ambassador POPPER. I would like to put specific data in the record, if I may, on this. The position is that we have made the point clear to the Government of Panama with respect to this, and that they have accepted the view that if the treaty expires without their having received the full contingent annuity, that that contingent annuity would not be paid.

Mr. BAUMAN. You are talking about two things. You are talking about a cumulative amount that they might claim as owed to them at the end of this treaty's life, because in some years there would not be a net revenue to pay that second \$10 million.

My question is, are they correct in their statement to me that they have a right to the full \$20 million, two \$10 million payments under article XIII, regardless, and that that will come out of the revenues, skimmed off the top, so to speak. Are they wrong or are they right when they told me that?

Ambassador POPPER. If that is what they said to you, sir, I cannot say that they were right. They have a right to \$10 million; that is perfectly clear.

Mr. BAUMAN. Yes; that is clear.

Ambassador POPPER. The second \$10 million—they have a right to the second \$10 million only on the terms and conditions which are stated in the treaty itself, in article XIII.

Mr. BAUMAN. Yes; but the problem is that you are suggesting a commission that is five-to-four, American and Panamanian, and the question is going to arise, if that is the past understanding of the Panamanian Government, about whether they get that second \$10 million. It is going to bear very strongly on whether I would vote for a corporate form or congressional appropriations.

When I was down there in January, they did not even know how the payments were to be made—were they to be made weekly, monthly; who handed the check to whom. Maybe since then, we have gotten a CPA to work on it.

Ambassador POPPER. May I develop the point a little further, sir?

Mr. BAUMAN. Yes, please.

Ambassador POPPER. Obviously, you are quite correct in saying that one must determine what are the costs and expenditures of the Canal Commission which have to be met before you can consider making a contingent payment.

In accepting the Senate reservation on this point, the Government of Panama has accepted the U.S. position that we are not required to program or budget for that second \$10 million in setting tolls. In proposed section 232 of H.R. 1716, you will see enumerated the items which we believe must be considered as costs of the canal, costs which must be met before the contingent payment can be made. That is a fairly extensive list of the elements of canal costs and expenditures.

The Government of Panama has accepted the position that costs must be met, before the contingent annuity can be paid.

Mr. BONIOR. Will the gentleman yield?

Mr. BAUMAN. Yes; I yield to the gentleman from Michigan.

Mr. BONIOR. Is there anything that you left out of that list that would allow the second payment before an obligated expense was met?

Ambassador POPPER. Of course, that list does not include the two elements to which I referred that are in H.R. 111; namely, the interest payment and an amortization payment on net direct investment of the U.S. Government. If those were included, those two, under the legislation, would become part of the canal costs which would have to be met before the contingent payment could be made.

Mr. BONIOR. There are no other obligations that are absent from the list?

Ambassador POPPER. I do not believe so, but I would have to examine the two together.

Mr. BAUMAN. Well, you can see my concern, and it goes directly to the heart of the two competing bills before us, as to whether or not the Congress should reappropriate the income from the canal for the life of this treaty, or whether or not control should be vested with the corporation, which, in effect, will be controlled by the President and, I assume, the people who wrote the treaty and their successors at the State Department. There is a far different view of the manner in which the operation ought to occur in those two camps, from what I hear from my colleagues. I can foresee the day of insufficient toll revenues, pressure from shipping companies and consumers in the United States to keep the tolls low. Then under the mistaken belief that it will not cost the consumers anything, they will turn to the U.S. Government for subsidies for the operations, which we were assured, repeatedly, would be self-sustaining.

So I would like to get from you folks a detailed analysis of how article XIII will be carried out in dollars and cents and a detailed analysis of all other costs, such as the sanitation, police, and other functions that will be turned over to Panama almost immediately. I think there is a token \$10 million annual payment in the treaty for that, to be revised for inflation. The estimates I heard when I was down there were that that would not cover even the cost of that operation.

The CHAIRMAN. Would the gentleman yield?

Mr. BAUMAN. Yes; I yield.

The CHAIRMAN. That is under article III. That is \$10 million mandated for 3 years, and after that 3-year period, that may well escalate. And, then, the 30 cents a net ton, back in article XIII, paragraph 4(a), gets adjusted, as the treaty says, "to reflect * * * wholesale price index for total manufactured goods during biennial periods." Now, that is 14 percent this year, and after a 5-year period, that is going to escalate. Then, you have the fixed 10, and then, you have the other 10 in (c) of 4, under article XIII.

So these payments are going to be very, very considerable over a 20-year period.

Mr. BAUMAN. Just one last comment on this. I just would like to get—and it is unbelievable that you have not brought something like that before us in the testimony today, because this is apparently the only day of testimony we are going to get from administration witnesses. This goes to the central issue, and it certainly bears

on the credibility of the administration when they presented these treaties to the American people and to the Senate for ratification; I mean, the assurances were repeatedly given that it was not going to cost the taxpayers one extra dollar. You have thrown \$340 million away with your statement casually this morning—just do away with the interest payment.

Ambassador POPPER. May I make one comment, sir?

Mr. BAUMAN. Sure.

Ambassador POPPER. I think a distinction must be drawn between what is paid to the Government of Panama because of the treaty and the control of the canal which we retain until 2000 in their territory. I think everybody agrees that something should be paid to them for the use of their national resource.

Many people, including many treaty opponents, felt that the payment of \$2,300,000 a year, which is what presently prevails is too low in present circumstances. A prolonged negotiating process went on to determine, to the satisfaction of the two sides, what would be a just and equitable return to Panama. It was broken down, as Chairman Murphy indicated a moment ago, into several components, including a component involving payments to Panama for extending public services to the new canal enterprise.

Though some of those components, though not all, were subject in one way or another to future increases to allow for inflation, the intent has always been to keep the canal operating on a self-sustaining basis, and we fully expect that that will happen. Payments to Panama can and will come out of canal tolls.

There will be other costs, as you have stated, to the U.S. Government in making the readjustment which must be made as we move into new areas, out of areas, and readjust our operations to reflect the new treaty situation; there will be costs. Those costs were referred to during the Senate debate. We can, of course, discuss them at greater length, if you wish, and we will be glad to cooperate by putting in the record whatever material you desire concerning them.

Mr. HUBBARD. Ambassador POPPER, I have one question, now that since we are in the period of asking questions of you before the next testimony. In the Washington Post on December 7, and I quote a paragraph:

A White House source involved in pushing the implementing legislation which is designed to appropriate funds and provide a mechanism for the smooth transfer of the Canal Zone to Panama on October 1 said the treaties would take effect with or without the implementing legislation.

Next, I refer to the Baltimore Sun of January 18, this year: "Carter administration officials say the treaties will go into effect starting in October with or without the implementing legislation."

Would you care to comment on this?

Ambassador POPPER. I really should ask my colleague, the legal adviser, to do so in detail, since I think what we are talking about is a question of law. If you will permit it, Mr. Chairman, may I ask Mr. Hansell to answer the question?

Mr. HUBBARD. That is fine. Mr. Hansell, would you please clarify this essential matter for us?

Mr. HANSELL. Mr. Chairman, I cannot clarify those particular comments, because I do not know who made them. We have made

clear, I think, a number of times that we think it is very important to have legislation to implement the treaties. We are anxious, as Secretary Christopher testified this morning, to do all that we can, working with the Congress, to accomplish the enactment of legislation before the treaties take effect. We have every hope and expectation that that will occur.

I cannot account for those comments, because I do not know who made them, and certainly they are not authorized statements on behalf of the administration.

Mr. HUBBARD. At this time, let me call on Congressman Bauman.

Mr. BAUMAN. Mr Chairman, could I just ask one thing, and that is, that Ambassador POPPER have these figures on costs, total costs, submitted to us before next Thursday when we go to Panama, so that we can have that as a basis of comparison when we hold hearings down there and talk with Company officials?

Ambassador POPPER. May I have one point of clarification, Congressman Bauman? Are you asking for figures, numbers, on the payments to be made to Panama in connection with article XIII and article III of the treaty?

Mr. BAUMAN. All aspects of the treaty.

Ambassador POPPER. All aspects of the treaty?

Mr. BAUMAN. Yes, all of the financial requirements.

Ambassador POPPER. Costs to the United States under all aspects of the treaty.

Mr. BAUMAN. And if they are not fixed, with the mechanism that calculates them.

Ambassador POPPER. We will give you, certainly, the best statement we can. I want to point out that it is not possible to be precise in all respects; there are some things that we cannot foresee—how much the cost will be of early retirement of Americans, how much the cost will be of transferring schools and hospitals to the Department of Defense; similar things of that kind for which there will be a considerable margin of uncertainty. But we will do the best we can to give you a statement which will be helpful to you when you go to Panama.

Mr. BAUMAN. Thank you.

[The material was provided in connection with the statement of Mr. Christopher.]

Mr. HUBBARD. Now, please, members of the subcommittee, let us hear Mr. Herbert J. Hansell, legal adviser for the State Department, who is now before our subcommittee for testimony. We have already heard from you in answering some of our questions, but please give us your statement, Mr. Hansell.

STATEMENT OF HERBERT J. HANSELL, LEGAL ADVISER, DEPARTMENT OF STATE

Mr. HANSELL. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I am grateful for the opportunity to appear before this subcommittee today. The legislation under consideration by your subcommittee is extremely important in view of our country's strong interest in the efficient operation and the defense of the Panama Canal.

The Department of State, working closely with the Panama Canal Company and the Office of the Secretary of the Army, took

the lead in drafting the administration's bill. The substance of the bill reflects a lengthy process of consultation among all the U.S. agencies interested in the canal operation and in the related subjects addressed by the legislation.

It might be useful for me to focus my preliminary remarks on the structure of the administration's bill, and then turn to several significant issues of law which arise from a comparison of our bill with the bill introduced by Chairman Murphy.

The proposed administration legislation would exercise the legislative authority reserved to the United States under the Panama Canal Treaty. As Ambassador Popper noted, one of the principal objectives of our negotiators was to preserve broad authority for the Congress to legislate on all important aspects of the canal operation until the year 2000, including the structure and financial practices of the Panama Canal Commission, employment policy, and the tolls regime. Pursuant to commitments made during the treaty ratification process, the administration has submitted a comprehensive bill which deals with the full range of issues reserved to U.S. discretion under the treaty.

Our basic approach to the task of drafting the legislation was to leave in force as much of the existing statutory framework as possible. Accordingly, our proposed bill consists of a series of amendments to the existing Canal Zone Code. Although certain substantive changes are proposed, under the administration bill the legislative structure governing canal operations would closely resemble the present statutory framework governing those operations.

We decided on this general approach for two principal reasons. Our first consideration was the proven success of the canal operation under present law, as developed and refined in large part by this committee. We felt that since this body of law has served U.S. interests in the canal so well, we should, in general, confine ourselves to making those changes which appeared necessary and appropriate in light of the new treaty.

In this connection, I should note that while the new treaty will significantly change the nature of our presence in Panama through the termination of the present Canal Zone, the treaty does not necessitate any fundamental change in existing U.S. law governing the canal operation. Ambassador Popper has noted some of the substantive advantages the administration sees in retaining the existing statutory framework, and I will be addressing some of these points later in my statement.

Our second principal consideration in adopting this approach was one of timing. Now was not the time, in our judgment, to make fundamental changes in our existing statutory framework governing the canal operation. The canal organization is now engaged in a major effort to plan and prepare for the implementation of the treaties. To impose, at the same time, basic alterations in the statutory structure within which the canal agency operates would seriously strain the resources of that agency to make the necessary adjustments in a timely and efficient manner.

Moreover, we believe that both the executive branch and the Congress will be in a much better position to determine the desirability of making further changes in the statutory framework once

we have had an opportunity to examine the situation in light of actual experience during the transition period. Indeed, in drafting our proposed legislation, we recognized the possibility that experience under the new treaty may indicate that additional changes in U.S. laws governing the canal operation would be desirable. Accordingly, section 2(e) of the administration's bill requires the President to submit to Congress, within 2 years, legislation proposing changes considered advisable in light of experience under the treaty. In the interim, we believe that continuity in the statutory framework should be a principal objective.

I understand that the committee has expressed an interest in hearing our views on the major differences between the administration's bill and those introduced by Chairman Murphy and Congressman Hansen. Ambassador Popper has reviewed a number of these differences from a policy standpoint in his testimony. I appreciate the opportunity to focus on the legal aspects of the differences between the bills before this committee.

Congressman Hansen's bill to implement the treaties, H.R. 454, closely parallels the administration's bill. There are several provisions contained in the administration's bill that are not addressed in H.R. 454. Among these are section 502 which implements the cemeteries reservation, and section 411 concerning the present Canal Zone prison system. We believe that the differences between the bills can be easily reconciled, and, with minor modifications, we could support Congressman Hansen's bill.

Congressman Hansen has introduced a second bill, H.R. 1511, which appears designed to preclude various actions, including preparations for treaty implementation, pending passage of a bill expressly providing for these activities. Secretary Christopher has already noted that we consider H.R. 1511 both unnecessary and undesirable.

Before addressing the points of difference between Chairman Murphy's bill and that proposed by the administration, I would like to observe that we have been impressed by the similarity of approach between us on a number of important issues. Both bills would address in a comprehensive manner the wide range of matters over which U.S. legislative authority may be exercised under the new treaties. We look forward to working with the chairman and other Members of the Congress and this committee as we seek to develop the best possible legislative package.

In our preliminary review of the two bills, we have also noted several significant points of departure. The first of these concerns whether the Panama Canal Commission will be a Government corporation, as the administration proposes, or an appropriated funds agency, as Chairman Murphy's bill provides.

Either form of organization is legally permissible under the treaty. Our negotiators made it clear to Panama that the Congress would have the option of adopting either form. Either form provides a legal basis for congressional oversight of the Commission. Since the Government Corporation Control Act requires annual approval by Congress of a government corporation's budget, every aspect of the Commission's operations will be potentially subject to the exercise of congressional authority if the Commission is established as a corporation.

I would note that the Congress has exercised its existing authority to modify the budget proposals of the present Panama Canal Company, and our bill would continue this authority with respect to the new Commission. As a noncorporate agency, as the chairman has proposed, the Commission would be subject to similar budget oversight through the authorization and appropriations process. The question, then, is not one of treaty limitations or of congressional oversight. Rather, it is simply which form of organization will better facilitate efficient operation of the canal.

Ambassador Popper has already described in some detail the advantages we see in maintaining the corporate form for the new commission. I fully support those views. Governor Parfitt will be discussing this question in some detail. In general, the corporate form requires a businesslike accounting system. Under such a system, costs can be accurately determined and allocated, and toll rates can be set at a level sufficient to meet costs. This encourages a self-sustaining operation.

Aside from the respective merits of the two forms of organization, the need for continuity, which I stressed a moment ago, argues strongly for retention of the corporate form, at least during the initial period of treaty implementation. This will permit a more thorough study of the question in light of actual experience under the treaty.

Another principal difference we have identified is that Chairman Murphy's bill would preclude the appointment of persons to the Commission's Board, except the Secretary of Defense, who are officials of either government. This provision could not legally be applied to the Panamanian members of the Board. Under the treaty, the Government of Panama has the right to designate persons of its choice to its four positions on the Board. As Ambassador Popper has explained, we also believe it is an unwise policy when applied to the U.S. members.

Under the treaty, Panama has the right to propose for appointment four members of the Board. The role of these members envisioned by the treaty is to represent the views of Panama with regard to the canal operation. Although we contemplate an informal process of consultation prior to the appointment of Panamanian members, the United States does not have the right under the treaty to refuse to appoint persons formally proposed by Panama. It follows necessarily that the United States has no right to limit the class of persons from which Panama can select its representatives.

The United States is, of course, free to specify the qualifications of its own representatives on the Board. Thus, application of the restriction imposed by Chairman Murphy's bill on U.S. members is legally permissible under the treaty. We believe it is unwise, however. Given the binational composition of the Board, it will be extremely important to insure that the U.S. majority guaranteed by the treaty is effectively exercised. This will require a considerable degree of discipline among the U.S. members.

We are concerned that a requirement that four of the five U.S. members be from the private sector may result in the loss of effective discipline over our members. The U.S. majority may not be effectively exercised because private U.S. members could align

themselves with Panama where their own views or interests coincide with those of Panama. Theoretically, such members could be removed if they failed to adhere to U.S. policy objectives. At best, however, the effectiveness of the board as an instrument of U.S. policy would be impaired, and the members would be placed in the difficult situation of attempting to represent U.S. policies which they might not share.

The administration proposal, which Ambassador Popper has described in detail, would insure that the broad range of U.S. military, commercial, transportation, economic, and foreign policy interests in the canal are reflected in our canal operating policy. We also recognize, of course, the need to take the interests of important segments of American society into account in formulating canal policy, particularly U.S. shippers and U.S. consumers. We believe, however, that this can best be accomplished through internal mechanisms of the U.S. Government, rather than direct private participation on a binational board.

Another significant difference between the two bills occurs in the area of U.S. oversight of the canal operation. Chairman Murphy's bill places the Commission under the direction of the Secretary of Defense. The administration bill does not designate an oversight agency, thus permitting the President, as sole stockholder, to exercise the oversight responsibility through any agency or official he may designate. This would continue the arrangements that have been in effect, satisfactorily, since 1951.

As we see it, however, this difference in the respective bills may not reflect any significant difference in objectives. As Ambassador Popper has explained, the administration intends that oversight of the canal operation should remain for the present with the Department of Defense, acting through the Secretary of the Army.

We agree with the chairman that the need for continuity, to which I referred earlier, supports DOD oversight. We believe it is appropriate, however, to retain for future administrations the flexibility to shift oversight to another agency, such as the Department of Transportation, if that were to appear desirable in light of experience under the new treaty. The administration's bill therefore does not seek to legislate the internal organization of the executive branch in this regard.

Moreover, in exercising its right to oversee the Commission, the United States must not appear to impinge on Panama's right to participate in the Commission through its minority representation on the Board. Terminology suggesting that Board members will be subject to the direction of the Secretary of Defense implies that the United States could instruct Panama's members. The United States, of course, has no authority under the treaty to direct Panama's representatives on the Board.

Similarly, to authorize the Secretary of Defense to direct the activities of the Commission is inappropriate, in view of the responsibility of the Board, under the treaty, to supervise the Commission. Under the administration's concept, the Department of Defense, acting through the Secretary of the Army, would oversee the day-to-day activities of the Commission. Policy decisions would be reached by the Board, with the Secretary of the Army serving as chairman. This framework would accommodate both the treaty

requirement of Panamanian participation and the need to insure ultimate U.S. control over the Commission, and we believe it is consistent with the intent of Chairman Murphy's bill.

Chairman Murphy's bill would continue in effect, with only technical modification, a provision of existing law which authorizes the President to designate a military officer to assume exclusive jurisdiction over the canal in time of war or when war is imminent. I understand that witnesses from the Department of Defense will be discussing issues related to canal defense when they appear before the committee. In general terms, we support Chairman Murphy's objective of insuring coordinated action between our military and canal operating authorities in time of actual or potential hostilities, in order to assure effective defense of the canal and related areas. However, merely continuing the present legislation on this subject, in effect, would be inconsistent with article III of the treaty. Under article III, the parties agree that the United States will discharge its responsibilities to manage, operate, and maintain the canal through the Panama Canal Commission. The United States may not, consistent with Article III, supersede the Commission by transferring its responsibilities to a military officer.

Coordination of our military and canal operation responsibilities, however, can be effected within the framework of article III. As I indicated earlier, the administration intends to vest oversight responsibility over the canal operation in DOD, thus facilitating close coordination of defense and operational requirements. Although hopefully there will never be a need for such measures, the President has the authority under the administration bill to fill all five U.S. seats on the Board with military representatives, and to appoint a military officer as Administrator or Deputy Administrator if defense requirements dictate.

Another issue related to Panama's minority role in the Commission is raised by the provision of Chairman Murphy's bill requiring Senate confirmation of Board members and of the Administrator and Deputy Administrator. The administration's bill contains no such requirement. To require Senate confirmation of Panamanian Board members would be inconsistent with Panama's right to designate its representatives under the treaty. As I mentioned earlier, the United States has no right to refuse to appoint a Board member proposed by Panama. Under these circumstances, Senate confirmation would either be an empty formality or, if refused, deprivation of Panama's rights under the treaty.

Confirmation of the Panamanian Deputy Administrator and, after 1989, the Administrator, may be legally permissible under the treaty since the United States has the right to remove these officials. The process of Senate confirmation of appointments could not, in practice, be applied to Panama's designees, however, without risking serious irritation of our relations with that nation. We believe that U.S. interests in this regard can be fully protected through our power to remove these officials should that prove necessary.

The two bills also differ on the question of continued application of U.S. law in the former Canal Zone. Both contain similar provisions regarding the continuation of U.S. laws based on territorial jurisdiction only to the extent necessary to exercise rights under

the treaty. Chairman Murphy's bill contains an additional provision expressly providing for the continuation of U.S. laws and regulations for the purpose of the exercise of U.S. jurisdiction during the transition period. I believe that this is a useful concept, and we are considering the adoption of a similar provision.

Finally, we would note that Chairman Murphy's bill prohibits the transfer of U.S. property in Panama except pursuant to law enacted by Congress, and authorizes those transfers which, under the treaty, will occur on the effective date. The constitutional issue regarding the authority to transfer property through the treaty-making power was fully debated during last year's ratification process and has been decided by the courts. The respective positions on the two sides of the issue are clear. Accordingly, for purposes of this discussion, I would propose to set this issue of constitutional principle aside and address the chairman's proposal on its merits.

[Whereupon, Mr. Bonior assumed the Chair.]

Mr. HANSELL. In our view, section 374 of Chairman Murphy's bill, by authorizing only those transfers required on the effective date of the treaty, suggests that the United States has an option whether or not to carry out its obligations under the treaty to transfer other property during the life of the treaty and at its termination. It does not. The United States is obligated to respect these transfers provided for in self-executing provisions of the treaty approved by the Senate. Under international law, these obligations cannot be overturned without Panama's consent. Accordingly, we cannot support legislative provisions which would suggest that the United States might seek to violate its international obligations.

[Whereupon, Mr. Hubbard resumed the Chair.]

Mr. HANSELL. Although I have stressed the differences between the two bills, I would like to reiterate in closing that they have many provisions in common. Both reflect a commitment to implementation of the treaty in a manner which best protects the interests of the United States. My colleagues and I look forward to working constructively with committee members and staff to develop the best form of legislation possible.

Thank you, Mr. Chairman, and I will be glad to join with Ambassador Popper in trying to answer your questions.

Mr. HUBBARD. Thank you, Mr. Herbert J. Hansell.

The American people have been told that we have a very positive control over the canal for the next 20 years based on the 5 to 4, U.S. majority on the board of the Panama Canal Commission. I am wondering about the power relationship between the Panama Canal Commission and the Consultative Committee, which will have an equal number of U.S. members and Panamanians. How important do you envision to be the role of the Consultative Committee, which is to advise on important policy matters such as tolls and employment?

Ambassador POPPER. If I may answer that question, Mr. Chairman, the Consultative Committee is, as I said in my statement, a high-level body, diplomatic in character. It is, under article III of the treaty, authorized to discuss general policy issues relating to the canal operation—tolls policy, employment and training of Pan-

amanians, international policies affecting the canal—and the committee will make recommendations on these and other similar issues to the two governments. That provision is in paragraph 7 of article III of the Panama Canal Treaty.

I think the essential point, Mr. Chairman, in answering your question, is that this is not a decisionmaking body. It is an advisory, negotiating body, and in a negotiating body where two sovereign nations are taking part, it is quite appropriate and fitting that there should be an equal number of representatives on either side.

The decisions will be made through the operational machinery set forth in other paragraphs of article III of the Panama Canal Treaty, under which, as you have indicated, the United States retains the means to exercise the authority granted to it under the treaty of operating, managing, and maintaining the canal between now and the year 2000. That is to say, the two governments may, as a result of a Consultative Committee deliberation, agree that some change in policy may be desirable, but it will be by decision of the U.S. Government, as the authority operating and managing the canal, that any changes will be put into effect. The Consultative Committee itself has no operational or management role.

Mr. HUBBARD. Either one of you, of course, could answer this question, please. Am I correct that the implementing agreements and exchange of notes for the new treaty arrangements were not placed before the Senate for approval?

Mr. HANSELL. Mr. Chairman, they were all before the Senate. Only the treaties required ratification, however. But the entire package of documents was submitted to the Senate and it was before that body at the time that it acted on the treaties.

Mr. HUBBARD. The Senate did not consider these, did they?

Mr. HANSELL. Well, they did not formally vote on them, but there was considerable discussion of them in the hearings before the Foreign Relations Committee. There was also consideration and discussion on the floor of the Senate of various provisions and aspects of those supplemental documents. But they were not formally voted on or ratified; that is correct.

Mr. HUBBARD. If that is the case, would that mean that the terms of the implementing legislation could override any of the provisions of the implementing agreements if they were in conflict?

Mr. HANSELL. They would, as a matter of domestic law, Mr. Chairman. Subsequent legislation enacted by the Congress would, of course, affect the agreements, but the agreements are valid international obligations and we would obviously be very concerned if there were to be conflicts between the provisions of any of our international understandings and the legislation that would be enacted by the Congress.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. Well, Mr. Chairman, since we are the only two members left here, I guess we will have to ask the questions.

There is question that concerns me, Mr. Hansell. You lay great concern on the Murphy bill and what it may or may not do to the appointments of the Panamanian members of the Commission. My question to you is, under article III, which creates this Panama Canal Commission and which requires that that Commission will be constituted by and in conformity with the laws of the United

States of America, which I assume includes the Constitution still, what authority does this treaty have to force the President of the United States to name a Panamanian to this Commission? How can the President's constitutional authority to name people to a Federal, U.S. agency be curtailed by a treaty? I mean, there is a serious constitutional conflict there, it seems to me.

Mr. HANSELL. The United States has entered into an international obligation with Panama that it will take that action; that the President will name to the Commission, as the Panamanian representatives, the individuals nominated by Panama. We would therefore not have any expectation that the President would violate the commitments undertaken lawfully by this Government, and there would be, as we perceive it, no situation in which the issue you outline could arise.

Mr. BAUMAN. Well, I am thinking of the very real possibility, given the erratic nature of the internal politics of Panama during this century and in the last 10 years under the Torrijos regime, of the presentation of a name, of a person who would be totally unacceptable to the American people. To name names, suppose someone decided to put Hugo Torrijos on the Commission, with his own personal record of peccadilloes in other activities, to just describe it mildly. That is not out of the realm of question based on the recent history of that nation. Would the President of the United States, Jimmy Carter or whoever his successor is, be required to name someone, regardless of who was nominated, to a U.S. agency? The treaty treats this as a U.S. agency.

Mr. HANSELL. As I believe has been indicated, we would expect that there would be, between the two governments, consultations and discussion as to the participation on the Board. If there were reasons, significant reasons for the President to be reluctant to name an individual who had been proposed to him by Panama, he undoubtedly would want to be in consultation with the Panamanians about it. This is a cooperative process, and I think we can have every confidence that if the President had concerns, he would have a mechanism for consulting with the Panamanians about it.

Mr. BAUMAN. Well, that is a confidence that I certainly do not share with you, Mr. Hansell. The possibilities exist for creating a major international incident by simply insisting upon an objectionable nominee and forcing the President of the United States, in diminution of his constitutional powers, to name someone to a Federal body. It seems to me it is a rather serious constitutional question that was not addressed in any of the debates that I heard.

How do you subject a foreign national to the Constitution of the United States? How do you make him a civil officer of the United States? He is a member of a U.S. commission, according to this treaty, if we set one up.

Mr. HANSELL. As Secretary Christopher testified, he would not be an officer of the United States within our constitutional or statutory provisions.

Mr. BAUMAN. But he would be a member of a U.S. agency or commission.

Mr. HANSELL. He would serve as a member of a binational board created under a bilateral, international agreement. That commission does, in fact, perform a variety of functions under U.S. law

and does discharge, of course, a broad range of U.S. responsibilities under the treaty and under our statutes. But that does not make the four Panamanian members of the board U.S. officers or employees.

Mr. HUBBARD. Mr. Hansell, if that is the case, if the Panamanian board members are indeed not, as you state, officials of the United States, then, I assume, under your theory those board members would not be paid by the United States?

Mr. HANSELL. That is correct, sir.

Mr. HUBBARD. Are you through? Can we move on to another member?

Mr. BAUMAN. Yes; I am sorry. I did not see the gentleman from Michigan.

Mr. HUBBARD. We are missing our friend from Michigan, who indeed may have some questions. Congressman David Bonior?

Mr. BONIOR. I would like to follow up on the last question that was posed by Congressman Bauman. Is there any other precedent, or is there any existing situation now in which we deal with a foreign government commission, board, if you will, in the manner that is being proposed by the administration in its bill in terms of foreign appointees to a board or commission; is there any precedent that we have on that?

Mr. HANSELL. There are a number of joint binational commissions that have been established by the United States with other countries and, of course, there are a number of multinational bodies. I cannot, right offhand, Mr. Bonior, think of one where the President has the authority to appoint the members designated by another government. I will not say it does not exist.

We would be glad to look into that to see what precedent there may be, but I must confess that I do not recall one right offhand. [The following material was provided for the record:]

PRECEDENTS FOR A BINATIONAL BOARD OR COMMISSION

There are a number of binational commissions composed of an equal number of representatives from each nation. Examples are the Joint Commission (United States and Canada), and the International Boundary and Water Commission (United States and Mexico). Decisions reached by these bodies are implemented by the respective agencies of each government.

We are not aware of any binational boards or commissions containing members designated by a foreign government but formally appointed by the President of the United States.

Mr. BONIOR. Thank you. I yield back my time.

Mr. HUBBARD. Thank you, Congressman Bonior. Five minutes allowed, please, for questions from our legal counsel, Mr. Bernard Tannenbaum, and then we will go to our next witnesses from the Defense Department.

Mr. TANNENBAUM. Just to follow up on that last question, there are a number of binational commissions, but that is quite different from a U.S. Government agency, which is the instant case, is that not so?

Mr. HANSELL. That is correct. Some binational bodies and multinational bodies do perform various functions under U.S. law, but I think we all regard this Commission created by the treaty as having a number of unique aspects.

Mr. TANNENBAUM. Well, I will not get into that debate with you at this point. But it is a board of directors of a U.S. Government agency; there is no question about that. And the question of whether the Panamanian, quote, employees are employees of the U.S. Government is a serious one, I would imagine.

We have had extensive colloquy in the past over the power of the House to dispose of property belonging to the U.S. Government, and I do not have the time here to go into great detail with you on that issue, but the record is pretty full.

However, some of the statements you made on pages 17 and 18 of your statement do demand attention. Earlier, you seemed to indicate that implementing legislation is necessary. Is that not so?

Mr. HANSELL. Yes; we do feel that it is very important that we have legislation to implement the treaties; yes, sir.

Mr. TANNENBAUM. Then the treaty is not totally self-executing; is that also not true?

Mr. HANSELL. Not in all respects.

Mr. TANNENBAUM. Well, then you are saying we have a hybrid treaty?

Mr. HANSELL. Yes; that is, some provisions of the treaty are self-executing and others are not.

Mr. TANNENBAUM. On page 17, you state that the "issue regarding the authority to transfer property through the treaty-making power was fully debated during last year's ratification process and has been decided by the courts."

Now, there is no U.S. Supreme Court decision on this issue; is there?

Mr. HANSELL. Decision by the U.S. Supreme Court, no; the court of appeals; yes.

Mr. TANNENBAUM. Are you referring to the *Edwards v. Carter* decision, a two-to-one split decision in the circuit court?

Mr. HANSELL. That is the most important decision. There were a few other cases, but most of them went off on political question grounds.

Mr. TANNENBAUM. The Supreme Court has never reversed its position that the power of the Congress to dispose of property, under article IV, section 2, clause 2 of the U.S. Constitution, is exclusive; is that correct?

Mr. HANSELL. Well, Mr. Tannenbaum, the answer, I guess, is that since the Supreme Court has never taken that position, it obviously has not reversed it. But you and I have debated that issue a number of times in the past, and I realize you do not want to get into that discussion this morning.

Mr. TANNENBAUM. On page 17, you discuss the question that the United States does not have an option here as to whether we are to dispose of the property, and so forth. Now, you are not suggesting here that Congress does not have the power to dispose of property belonging to the United States; you have not taken that position, have you?

Mr. HANSELL. No.

Mr. TANNENBAUM. You also mention that, "under international law, these obligations cannot be overturned without Panama's consent." Now, is it not true that, if the position taken by the subcommittee and the chairman, of the full committee is correct, and since

the Supreme Court has not decided this issue yet, we could have an unconstitutional treaty in this respect? And if we have an unconstitutional treaty, would not H.R. 111 actually provide the methodology to make this treaty constitutional, in that it provides a mechanism for the approval by Congress of the disposal of the U.S. property?

Mr. HANSELL. I am afraid I have great difficulty with that question. I cannot visualize any circumstance in which those provisions in the treaty would not be valid, particularly considering that the treaties have been fully debated and ratified and the courts have sustained the administration's position on the issue. I cannot, I guess, follow that analysis to any logical conclusion.

Mr. TANNENBAUM. Well, the issue has never been decided by the U.S. Supreme Court, except for the long line of cases which clearly say that the power, under article IV, of the Congress is exclusive.

Now, assuming that the power is exclusive in this instance, then we have an unconstitutional treaty, in that it purports to dispose of property without the consent of Congress, and the consent of Congress means both Houses of Congress.

Now, if the Congress, through H.R. 111, or however, approves the treaty and provides the specific approval of dispositions from time to time, would this not provide the constitutional methodology for authorizing these transfers?

Mr. HANSELL. Mr. Tannenbaum, I am struggling for a way in which I do not have to say, each time you make that speech, that you are wrong on the law; that that is not the position of the Supreme Court; that that is not a correct reading of the Constitution. I do not, obviously, want to get into a debate with you. You and I went through this kind of colloquy for perhaps an hour and a half once before.

I can only say to you that at that time, there was no decision of the U.S. courts on the issue. It is true that there has, since then, been no decision of the Supreme Court on the issue, but it is, it seems to me, of overwhelming significance that the very issue that you have discussed and that you and I debated at great length did, in fact, go to a district court of the United States and did, in fact, go to the Court of Appeals for the District of Columbia. In both cases, the position which the administration had suggested was sustained. The Supreme Court did, in fact, decline to grant certiorari and the case went back to the appellate court for rehearing, and the request for the re-hearing was not accepted.

I do not know what more we could have done. We would have been delighted had the Supreme Court taken the issue, but it did not. Therefore the highest court that has passed on this issue, the court of appeals of the United States—in this circuit has addressed this express issue and has now spoken. I cannot, obviously, engage in a discussion that pretends that that decision does not exist. It does. That is now the law of the land, and it is certainly the law that this administration has felt all along was correct, and it now feels vindicated.

Mr. TANNENBAUM. Well, the Supreme Court could very well have denied cert on the grounds that this body of Congress would approve the transfer and it would become academic; is that not true?

Mr. HANSELL. No.

Mr. BAUMAN. Mr. Chairman, could I make a comment on that point?

Mr. HUBBARD. Go ahead.

Mr. BAUMAN. I do not ask, necessarily, for a response from Mr. Hansell, because I think his view has been well established on this issue.

As one of the plaintiffs in the suit, I cannot recall the precise holding of the lower court; it was upheld eventually, but it was not squarely on the issue of the disposition of property by both Houses, as I recall; it was on extraneous issues the court found to justify not passing on that. It had something to do with the House's standing, and whether it was moot until the treaties were ratified by the Senate, and questions of that nature.

But I do suggest to you that Chairman Murphy, in his draft of this legislation, has offered what I think is a very mild slap on the wrist to the administration on this constitutional issue. He is trying, as I see it, to salvage what I thought was, and what the Supreme Court has not yet overruled specifically, the two-House right to dispose of property. It may well be that we are going to face this issue squarely, in a much fuller sense than the Murphy bill suggests. There may well be amendments that will, as in one of the Hansen bills, completely deny the right, and a vote may be taken on that.

And so, while you have sort of deftly swept it aside, it is not dead, nor is the Constitution. That is what Mr. Tannenbaum has raised here.

Mr. HANSELL. Obviously, I did not mean to suggest that the issue ought not to be aired anytime and to whatever extent the committee would like to air it. I simply wanted to explain that we do regard the issue as having been resolved in two senses. One, the commitment has now been made under the procedure authorized by the Constitution, and it is now a solemn international obligation. And, second, you are quite right, Mr. Bauman, according to my recollection, in stating that the district court did not get to these issues. But the court of appeals did decide to address it on the merits and, as you know, after the issue was fully briefed, it did deal with the issue on the merits, and it was that issue that the Supreme Court was asked to take on certiorari, and declined. And it was the constitutional issue that the court of appeals was asked to reconsider and declined. But you are quite right on the district court aspect of it.

Mr. HUBBARD. Congressman Treen?

Mr. TREEN. Thank you, Mr. Chairman. Just two quick questions, because I know we want to get to Secretary Duncan.

Mr. Hansell, I think you were in the room when I asked Secretary Christopher about a couple of points, and I probably ought to be just satisfied with what he told me, but I want to get a response from those that are responsible for the legal aspects of this.

The first question was on the point about the President having some power, under both the administration bill and under the bill introduced by Mr. Murphy, to have final approval with respect to tolls. That appears to me to conflict with the clear treaty provision that the United States has the power, but that power will be exercised through a commission on which four Panamanians will

sit, and presumably, they have, because of the treaty, some input into the toll question. Yet, in both bills, we seem to give the President a veto—veto power under the administration bill, and with respect to the bill introduced by Mr. Murphy, it seems like the President will actually set the tolls. That is the first question.

The other one is with respect to whether or not we could write into this legislation, if we chose—and I realize it is a policy question, but strictly from a legal standpoint that the five U.S. members of the commission will vote en bloc.

[The following was submitted:]

COULD CONGRESS REQUIRE U.S. MEMBERS ON THE BOARD TO VOTE EN BLOC

Yes. The Treaty gives the United States a majority position on the Board. It is within the authority of the United States to determine how it will exercise its majority control.

Mr. HANSELL. Mr. Treen, on the first question, article III of the treaty, as you know, provides that in carrying out the responsibilities of the United States to manage, operate, and maintain the canal, the United States may—and then I am skipping to clause (d), if you have the treaty before you—

Mr. TREEN. I do.

Mr. HANSELL [continuing]. "Establish, modify, collect, and retain tolls."

Mr. TREEN. All right.

Mr. HANSELL. So that is a basic authority and responsibility of the United States in discharge of its role in operating the canal, to "establish, modify, collect, and retain tolls."

Now, that is exercised—its authorities, of course, are exercised, and its responsibilities are carried out, to use the language of paragraph 3 of article III, through the "United States Government agency called the Panama Canal Commission, which shall be constituted" as provided in that article.

Now, the provision of the bill with regard to Presidential approval, in our view, implements the ultimate authority of the United States to set tolls. The President's authority in respect to tolls is, as we view it, only a part of his ultimate authority to control the other respects in which the United States exercises its responsibilities and authority to manage, operate, and maintain the canal.

Mr. TREEN. If you would, please, direct yourself to the clear language of paragraph 3 which says that, "the United States of America shall * * * carry out its responsibilities by means of a United States Government agency called the Panama Canal Commission." You address yourself to that language. Are you saying that that language of the treaty is not in conflict with the proposition that the President may ultimately set the tolls on his own?

I hope we have that flexibility. Do not misunderstand me. But I have difficulty appreciating that we do not have a conflict there.

Mr. HANSELL. It is perhaps not the clearest reconciliation of several provisions, but we think it is very important that the broad U.S. flexibility that is provided for in the treaty to manage and operate the canal be recognized, and we would not want to take any view that suggested that we did not have that broad flexibility under the treaty.

We think that the responsibility of the United States under article III, paragraph 2, and the various responsibilities of the United States to operate the canal, although they will be carried out through the Commission, are, in the end, subject to the ultimate authority of the President of the United States.

Ambassador POPPER. May I add a word to that, sir?

Mr. TREEN. Mr. Hansell, as a lawyer, I can appreciate that there are a lot of aspects to this that you could not possibly be completely prepared on, and I would ask you, at some point, to give me a response more fully in writing. I know it is not quite fair to pick at you on all these things without time to prepare. So, please give me what I am sure you will agree would be a better response if you have had time to consider it further, and then address the other question, if you will.

Do you agree with Mr. Christopher that within the framework of the treaty, we could legally provide that the five U.S. commissioners would have to vote en bloc? You do agree with that?

[The following material was received for the record:]

PRESIDENT'S ULTIMATE AUTHORITY OVER TOLL RATES AND ARTICLE III OF TREATY

This provision would continue, in substance, the existing procedure for toll setting within the framework of the new Treaty. We believe such a provision is desirable. As a practical matter, we doubt that the President would have occasion to disapprove toll rate recommendations of the Commission, since the U.S.-appointed majority of the Board undoubtedly would be acting in accordance with coordinated executive branch positions in making such recommendations.

Mr. HANSELL. Yes.

Mr. TREEN. All right, thank you very much. Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, Congressman Treen.

Before you go please, Mr. Merrill Whitman, legal counsel for our subcommittee, wants to ask a few questions, and then we will be through unless some other member comes in. Go ahead.

Mr. WHITMAN. I only have two questions, Mr. Chairman. I wonder if you would give, for the information of the subcommittee, your concept of the basic legal difference between a corporate-form agency and a noncorporate-form agency.

Mr. HUBBARD. Did you hear the question?

Mr. HANSELL. I did hear the question, and I think what I would like to do is respond to that in writing. I am familiar with a number of Government corporations and, as all of you gentlemen know, this Government operates through quite a number of corporations. The Government Corporation Control Act, as I recall, identifies two or three categories: wholly owned Government corporations and mixed ownership Government corporations, for example. I personally have had involvement with perhaps half a dozen—Amtrak; Legal Service Corporations; Comsat, when it was first created, and two or three others.

There are a good many statutory provisions under the Government Corporation Control Act that apply to Government corporations, and there are other statutes. I would like to have an opportunity to give you a piece of paper on that subject that would describe our view of the differences between a Government corporation and other Government agencies, if we might.

Mr. WHITMAN. I think that would be satisfactory. I want to stress, though, that I do not really want an analysis of the Government Corporation Control Act, but the reason for preference of one form of agency over the other; what there is in one form that you find to be superior in that form that is not present in the other. That is the end question that I would like you to address.

Mr. HANSELL. We would be glad to do that.

Mr. WHITMAN. Thank you.

[The following was submitted for the record:]

BASIC LEGAL DIFFERENCE BETWEEN A CORPORATE AND A NONCORPORATE FORM AGENCY

Following are some of the differences between the two types of agencies:

Usually the corporate form is specified in the basic statute, and the agency is organized like a corporation.

A government corporation usually finances its operations wholly or partly from revenues generated by those operations. There is generally no such expectation in the case of a noncorporate agency; generally the funds for the operations of such an agency are appropriated from general revenues.

The accounting systems specified by law for the two forms tend to be different. Corporations usually are required to prepare a "business-type" budget. They employ accounting which is designed to match costs and revenues. The accounting employed by agencies is conventional government accounting.

Mr. HUBBARD. To Ambassador David H. Popper and Mr. Herbert J. Hansell, legal adviser for the Department of State, we thank you for your testimony. We appreciate your being with us and answering the questions.

Mr. HANSELL. Thank you, Mr. Chairman.

Ambassador POPPER. Thank you, Mr. Chairman.

Mr. HUBBARD. I now ask unanimous consent that members have 5 days to file any follow-up questions for these or other witnesses who have appeared before us today or will appear during hearings on this implementing legislation. We ask that witnesses who are sent follow-up questions to reply promptly. Is there any objection?

[No response.]

Mr. HUBBARD. Hearing none, it is so ordered.

We will now ask for our next witness to appear before us. He is the Honorable Charles W. Duncan, Jr., Deputy Secretary of Defense. Mr. Duncan has been quite active in Panama Canal treaty negotiations and in the implementing legislation process. Mr. Duncan held key positions of corporate responsibility before coming to the Department of Defense.

We welcome Secretary Duncan. With him is Lt. Gen. Welborn G. Dolvin, who is presently serving as the Department of Defense representative for Panama Canal treaty implementation. General Dolvin was one of our treaty negotiators in the Canal treaty negotiations. The General has a very distinguished military background.

We welcome you, Secretary Duncan and General Dolvin. We will now hear your testimony, please, Secretary Charles W. Duncan, Jr.

STATEMENT OF CHARLES W. DUNCAN, JR., DEPUTY SECRETARY OF DEFENSE, ACCOMPANIED BY WELBORN G. DOLVIN, DEPARTMENT OF DEFENSE REPRESENTATIVE FOR PANAMA CANAL TREATY AFFAIRS

Mr. DUNCAN. Mr. Chairman and members of the committee, I do appreciate the opportunity to meet with you today in order to

discuss H.R. 1716, the administration bill to implement the Panama Canal Treaty of 1977 and the related agreements.

Last June, the President and General Torrijos signed the articles of ratification concerning the 1977 Panama Canal Treaties. In doing this, Panama accepted the treaties, modifications, and additions, and is now beginning to carry out its obligations. The U.S. Government also is preparing to implement the treaties.

The most significant element of our preparations at this critical juncture is, of course, the implementing legislation that you are now considering.

The treaties are now a fact. They will enter into force no later than October 1, 1979. The terms of the treaty provide that a series of irrevocable events will occur. The Canal Zone will disappear. The Panama Canal Company and the Canal Zone Government will no longer be authorized to operate the canal in Panama.

However, the treaty provides authority for the United States to establish a set of new mechanisms for the operation and defense of the canal and for the conduct of certain civil and logistical functions by U.S. agencies. The new mechanisms must, of course, operate within the agreed-upon terms of the treaty itself. This means that the U.S. Government is required to reorganize its canal operation in Panama. That has to be done under conditions of general Panamanian jurisdiction. We must, therefore, have the legal framework established under which we will operate and defend the canal, and also support our civilian and military personnel. Many adjustments will have to be made in order to manage the canal enterprise in this new environment. While the canal treaty provides the authority for these arrangements and binds the Government of Panama to accept them, this implementing legislation is needed to set forth clearly the framework under which the U.S. Government can exercise that authority.

So, in sum, the legislation submitted by the President for your consideration establishes the organizational structure which will enable the U.S. Government to properly operate and defend the Panama Canal for the remainder of this century, and also the authority to effectively carry out the new functions authorized under the treaty. The proposed legislation establishes a Panama Canal Commission with the requisite authority to manage the operation of the canal. The treaty specifies the conditions of employment and retirement for canal employees. The treaty establishes a labor-management system which meets the unique requirements of the Commission. The treaty authorizes the transfer of certain functions and the associated employees and facilities to the Department of Defense, such as hospitals, dependent schools, and the postal system. It also enables the United States to carry out its treaty obligations to Panama, to include payments from tolls, and authorizes the continuation of the U.S. police force and courts during the 30-month transition period.

The President intends that the Secretary of Defense, operating through the Secretary of the Army, will exercise the executive oversight responsibility for the Panama Canal Commission. This will provide for the continuation of the existing supervisory structure which has been so effective in the past. Placing the management responsibility of the new Panama Canal Commission under

the Secretary of Defense will enhance the coordination of overall policy concerning those activities with other Cabinet-level departments of the executive branch, and will also insure that the canal's operation and its defense will be carried out through one centralized authority.

The administration bill would continue ultimate authority in the President, as has been the case since 1951. The President has delegated this responsibility to the Department of Defense. Nevertheless, we believe that the President, as the chief foreign affairs officer of the U.S., should continue to have the flexibility to place the oversight responsibility elsewhere, should changed circumstances so dictate. Accordingly we oppose the provision of H.R. 111 that would freeze the responsibility in the Department of Defense.

The treaty gives the United States the primary responsibility for canal defense. This includes the right of decision with respect to the level and type of U.S. military forces stationed in Panama throughout this century. At the present, we have no plans to reduce or to increase our forces in Panama during the initial treaty period. We will, of course, periodically review the situation in the light of the changing political and military situation.

The Department of Defense is prepared to undertake all of the above-mentioned responsibilities and has been deeply involve, for many months, in planning for the implementation of the new treaties on October 1 of this year. The legislation which has been submitted for your consideration is one of the major results of that planning. In coordination with the other executive branch agencies which have collateral interests and responsibilities concerning the operation of the Panama Canal, we have proposed in this legislation the organizations and procedures that we strongly believe will enable us to do the job in the most effective manner. The legislation would continue the organizational concept of the Panama Canal Company—the Government corporation—which has served U.S. interests so well for 30 years. The corporate concept provides the greatest organizational and personnel stability during the transition from an organization characterized by unilateral U.S. decisionmaking to one characterized by effective U.S. control over a decisionmaking process that includes Panamanian participation. The past 30 years have additionally demonstrated that the corporate organization is efficient in an environment characterized by uncertain revenues and costs and by the need for delegated onsite decisionmaking authority. The Secretary of the Army and Governor Parfitt will address this issue in detail when they appear before this committee, so I am highlighting the point at this time to express the Secretary of Defense's full support for the continuation of this arrangement.

We have also concluded that the U.S. members of the Board of Directors should be representatives of the agencies which have the executive responsibility for a legitimate interest in the success of the canal enterprise. This composition of the U.S. members of the Governing Board provides the most effective mechanism to insure U.S. control of the Panama Canal Commission and to provide for a smooth integration of Panamanian management personnel during the life of the treaty.

The next two paragraphs in my formal presentation, including the timing of the implementing legislation, I am told by General Dolvin were discussed with Mr. Christopher, and so I will skip over that section and continue on page 9.

The President has stated his intention that the Secretary of Defense undertake the responsibility for both the operation and defense of the Panama Canal and carry out the implementation of the Panama Canal Treaty. We are prepared to undertake this responsibility, in full knowledge of the magnitude of the tasks. These tasks primarily involve people. There are thousands of American citizen employees who have dedicated their careers to the successful operation of the Panama Canal. Their continued dedication to this great enterprise is critical to its future success. They are entitled to our maximum efforts to insure that their quality of life is, to the extent possible, maintained. In summary, we see our task encompassing efficient canal traffic management; the training and integration of Panamanian management into the Commission; the maintenance of financial self-sufficiency, combined with our resolve to keep the toll rates as low as practicable; close coordination of canal operation and defense; and the maximum support for the official U.S. community which will remain both to operate and to defend the canal.

These are worthy tasks. We need and ask for your early support to carry them out in a manner befitting this great Nation.

The Department of Defense has received a request from this committee to respond formally to a number of specific questions concerning the legislation and I would like, Mr. Chairman, at this time to submit my responses for the record to the series of questions attached to your letter.

[The following was received for the record:]

QUESTIONS OF COMMITTEE ANSWERED BY DEPARTMENT OF DEFENSE

QUESTION #1: The Panama Canal Treaty and Related Agreements spell out a number of changes to be accomplished in the canal area. In terms of those activities, defense and related, over which the Department of Defense has jurisdiction in the Canal Zone which changes will be made pursuant to the terms of the implementing legislative package now before the Congress, and which are being accomplished pursuant to other legislation or appropriations acts, and which are being accomplished without legislation?

ANSWER: The treaty related activities of the Department of Defense fall under one of the following categories: (1) continuing canal defense responsibilities; (2) restationing of military units resulting from transfer of certain facilities and areas to Panama; (3) assumption of certain functions from the Canal Zone Government (CZG); (4) expansion and/or modification of existing base support operations (BASOPS) to provide administrative, logistical and recreational support to the U.S. civilian employees, and their dependents, of the Commission; and (5) addition of certain functions, formerly provided by the CZG, to meet self support requirements.

Discussion of Categories:

(1) Continuing canal defense responsibilities will remain essentially the same in so far as force levels and resource requirements are concerned. Panama's participation in canal defense is expected to be gradual. Combined planning and field exercises can be carried out within the limits of projected training budgets and authorized FMS resources.

(2) The requirement to restation military units has resulted in the following Military Construction Programs.

(a) FY 79: \$40.6 Million (\$10.9 Million, SecDef Contingency Fund; \$29.7 Million, supplemental request)

(b) FY 80: \$6.0 Million

(3) DoD will assume the following functions from the CZG: (HR 1716)

(a) Educational services for dependents - ASD(MRA&L) (Section 232b)

(b) Postal Services - Department of the Air Force (Section 341)

(QUESTION #1 Continued)

(c) Mortuary services - Department of the Army
(Section 232b)

(d) Cemeteries - Department of the Army (Section 232b)

(e) Health Services - Department of the Army
(Section 232b)

(4) The following BASOPS functions will have to be increased or modified to support the added civilian component. (DoD appropriations bill)

(a) Base operation support to dependent schools -
Department of the Army

(b) ADP support and finance and accounting office
support for DoD dependent schools - Department of the Air Force

(c) Commissary services - Department of the Army

(d) Post Exchange services - Army and Air Force
Exchange

(e) Recreational Services - Appropriate Military
Department

(f) Base operations (less DoD dependent schools) -
Appropriate Military Department (includes such activities
as supply operations, maintenance of materiel, transportation
services, personnel services, utilities, maintenance of real
property, general engineering support, and administrative
services).

(5) The following functions must be added to provide
services formerly provided by the CZG: (DoD appropriations
bill)

(a) Refuse collection and Defense Sites/Areas of
Military Coordination - Department of the Army

(b) Fire Fighting Support on military facilities
(coordinated with available community support).

QUESTION #2: During the duration of the Panama Canal Treaty of 1977, how is it planned that the defense and operation of the Panama Canal be integrated?

ANSWER: The Panama Canal Treaty gives to the U.S. the primary responsibility for the defense of the Panama Canal, through the remainder of this century. It provides for increasing Panamanian participation in the canal defense role, and combined planning and training exercises. The Treaty also gives to the U.S. the unilateral right to determine its own force levels to be stationed in Panama, subject only to the caveat of endeavoring not to increase the level of forces in normal times. The Agreement in Implementation to Article IV of that treaty sets forth the rights and obligations of U.S. forces stationed in Panama during the life of the treaty. Specifically, our forces have the unimpeded right of free movement in Panama, the unimpaired use of the military facilities listed in Annex A of that agreement and delineated in the set of maps accompanying that agreement. The use of our training areas by Panamanian military forces under agreed schedules is also provided.

HR 1716 also reinforces the military chain of command between the President and the unified command commander--in this case Lt General McAuliffe's U.S. Southern Command--by ~~highlighting~~ ^{emphasizing} the military commander's exception from the general authority of the Ambassador under 22 USC § 2680a.

QUESTION #3: There are provisions in both HR 111 and HR 1716 which address the question of interagency transfers and reimbursements for services. Are the provisions of both bills adequate to accomplish the provision of services across agency lines as contemplated by present Executive authorities?

ANSWER:

a. Cross Servicing Agreements in effect requiring reimbursements between DoD and other federal agencies in Panama are as follows:

<u>SUPPLIER</u>	<u>RECEIVER</u>	<u>SERVICE</u>
1. 93d Bde	USAID	Stor of Supplies
2. 93d Bde	Smithsonian	Util Bldg Rental
3. 93d Bde	Pan Can Company	Printing
4. 93d Bde	FAA	Sewage Disposal
5. 93d Bde	FAA	Repair Parts
6. Naval Station	Pan Can Company	POL Related
7. Naval Station	USAID	Warehousing
8. Naval Station	CZG	Firefighting Site
9. Naval Station	Pan Can Company	Radio Receiver Equipment
10. Naval Station	Pan Can Company	Space Rental
11. Naval Station	Pan Can Company	Barge Services
12. Naval Station	Pan Can Company	Fuel Oil
13. Naval Station	FAA	Admin Support
14. 24 Comp Wing	FAA	Admin Support
15. 24 Comp Wing	Pan Can Company	Calibration Support
16. USACC	US Embassy	Maintenance Service
17. USACC	USAID	Commo Service
18. USACC	FBIS	Commo Maintenance
19. Pan Can Company	193d Bde	MilVan Services
20. Pan Can Company	193d Bde	Firefighting Services
21. Pan Can Company	Naval Station	Repair Facilities
22. Pan Can Company	Naval Station	Oil Pollution Control
23. Pan Can Company	Naval Station	Fuel Oil
24. Pan Can Company	193d Bde	Oil Pollution Control

b. Both HR 1716 and HR 111 adequately provide for the transfer of functions from the Canal Zone Government to another U.S. agency (Department of Defense) and for reimbursement of services provided to the Panama Canal Commission.

QUESTION #4: How should the labor management provisions of implementing legislation relate to the applicability of the Civil Service Reform Act's Title VII? What would be the effect of excluding non-Commission employees in the canal area from the terms of the statutory application of Title VII of the Civil Service Reform Act?

ANSWER: We see the Panama Canal Commission as a unique organization, with a work force which will be increasingly Panamanian at all levels. A labor relations system focused largely on local conditions and issues would appear to be most appropriate in terms of facilitating--or at least avoiding interference with--the gradual transition to Panamanian control of Canal operations. To lock the Commission into a labor relations system designed to deal with issues arising out of labor-management dealings in the United States Government environment could well prove counterproductive over the years.

Department of Defense elements in Panama, on the other hand, will be performing functions very similar to those we perform in various other parts of the world. With the advent of a new Federal labor relations statute--Title VII of the Civil Service Reform Act--we see no reason why our United States citizen employees in Panama should not be subject to the same labor relations program policies as their counterparts in other overseas areas as well as in the continental United States. We believe, in fact, that U.S. citizen employees of the Department of Defense in Panama are currently covered by Title VII.

By the terms of Title VII, non-U.S. citizen employees of U.S. agencies employed outside the United States are excluded from its coverage. This provision combined with provisions of the Agreement in Implementation of Article IV, appear to mandate a labor relations system for Panamanian employees of Defense elements which is more attuned to local conditions and customs. It may well prove feasible to conduct labor relations with respect to our Panamanian workforce under the system established for the Panama Canal Commission.

QUESTION #5: Does the Executive prefer that U.S. military vessels transiting the canal pay tolls in lieu of the present regime under which the canal operating authority receives a credit with the U.S. Treasury for the transiting of such vessels?

ANSWER: HR 111 authorizes the President to require U.S. Government vessels to pay tolls. HR 1716 requires that these vessels pay tolls. To the extent that the President would require the direct payment of tolls by Government vessels, the two bills would be the same in this respect.

HR 111 provides that, if Government vessels are not required by the President to pay tolls, the amount of the tolls is to be computed and treated as Canal revenues for purposes of prescribing rates of tolls and calculating the payment to Panama under paragraph 4(a) of Article XIII of the Treaty. The purpose of this provision is to ensure that cost of transit for Government vessels is not subsidized from the tolls paid by commercial vessels and that the tonnage payment to Panama under Article XIII of the Treaty is computed fairly. HR 1716 does not require these provisions, since the direct payment of tolls by Government vessels treats them the same as all other Canal users and, therefore, automatically precludes any inequities arising from their transit of the Canal.

Paragraph 4(c) of Article XIII of the Treaty provides for the payment to Panama of up to \$10.0 million annually out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission. HR 111 would, by omission, exclude tolls calculated to U.S. Government vessels from being recorded as operating revenues for purpose of calculating this payment to Panama. This treatment is inconsistent with that afforded to the payment to Panama required under paragraph 4(a) of Article XIII of the Treaty. Under HR 1716, tolls paid by U.S. Government vessels would be automatically recorded as operating revenues of the Canal.

In our view, it is preferable (and virtually mandatory under HR 1716) that U.S. Government vessels be required to pay tolls directly to the Commission, the same as any other user. While this will involve DoD seeking appropriations for this purpose, it will alleviate many of the problems inherent in dealing with imputed tolls.

QUESTION #6: In view of the fact that the Department of Defense indicated on many occasions during the treaty debates that U.S. authority for defense of the Panama Canal was virtually unlimited, especially to the year 2000, is there any reason why the appointment of a military officer for control of the canal in wartime would be in conflict with the terms of the new treaty arrangements?

ANSWER: HR 1716 also repeals those provisions of the Panama Canal Code concerning military command of the canal operation under conditions of actual or imminent war. The repeal of these provisions is consistent with Article III of the Treaty, which establishes a Panama Canal Commission and states that "the Panama Canal Commission shall be supervised by a Board composed of nine members . . ." There is no provision in the treaty which provides for suspending the powers of the Board in wartime, nor is there a requirement for such a provision. The Board will always have a U.S. majority, under Section 206(c), HR 1716. Additionally, the President has stated his intention to appoint the U.S. members of the Board from already appointed senior officials of the executive departments having primary and collateral interests in the canal operation, with the DoD representative as the Chairman of the Board. Under the President's plan, coordination of canal operation and defense is assured, under conditions of peace and war, without the need for changes in the supervisory structure which would be quickly interpreted as a violation of both treaties.

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, as amended, gives to the U.S. the unilateral right to take whatever actions we should deem necessary, to include the use of military force, for the purpose of protecting the canal and assuring its neutrality. It also imposes a responsibility on both countries, to maintain that neutrality and to permit its use by all nations in peace and war. To impose a unilateral military command over the canal's operation for the purpose of interrupting the transit of other nations' military vessels, even should the U.S. be at war with one or more of those nations, would violate the Treaty. Our senior military leaders have emphasized that the deployment of enemy ships towards the canal, for the purpose of transit, would pose an inviting target to our naval and air forces--long before the enemy ships could reach the canal itself. Article VI of the Treaty, as amended, also provides that U.S. military vessels can, in times of emergency, transit the canal "at the head of the line."

In short, HR 1716, combined with the President's proposed executive actions, will ensure the integration of the Canal's operation and defense, compatible with our international obligations, and that our military vessels can transit the canal, under emergency conditions, as quickly as they are capable.

QUESTION #7: What are the advantages and disadvantages that will result from a regime in which the Panama Canal Commission is made subject to the direction of the Secretary of Defense?

ANSWER: The President intends that the Secretary of Defense, operating through the Secretary of the Army, will exercise the executive oversight responsibility for the Panama Canal Commission. This will provide for the continuation of the existing supervisory structure which has been so effective in the past. Placing the management responsibility of the new Panama Canal Commission under the Secretary of Defense will enhance the coordination of overall policy concerning those activities with other cabinet level departments of the executive branch and will also ensure that the canal's operation and its defense will be carried out through one centralized authority. To authorize the Secretary of Defense, or any other officer of the U.S., to "direct" the Commission would be contrary to the intent of the negotiating history of the Treaty. The purpose of including Panamanian nationals on the Board is to provide Panama a substantive although minority voice in the management of the Commission. The U.S. will have, under HR 1716, the final vote on the Commission's policies and activities.

-) HR 1716 provides the authority to the President to appoint the officer as he considers appropriate to exercise this oversight. The Administration considers it preferable that the President continue to have this authority.

QUESTION #8: What is the view of the Department of Defense with respect to the provisions of HR 111 and HR 1716 that allow agencies to opt in or out of the Panama Canal employment system? What is the rationale behind an option rather than the present mandatory character of the employment regime in the canal area?

ANSWER: Sections 142 and 149, which are very similar to language in the Administration's Bill, will give the Secretary of Defense and the head of any other executive agency the option to elect to have the Panama Canal Employment System apply to personnel of his agency in whole or in part.

The employment system currently in use in the Canal Zone is different in many respects from the system used by the Department of Defense in other foreign areas. These differences may become even more pronounced in the new system that will be developed to implement the new treaty. The new system or parts of it may be so drastically different from Defense practices elsewhere that it would create difficulties for us if we implemented them. These sections provide the flexibility needed to deal with this potential problem and Defense is very much in favor of them.

QUESTION #9: Are the provisions for disaster relief in H.R. 111 and H.R. 1716 sufficient to continue to accomplish the purposes of the relief operations that now emanate from the Canal Zone?

ANSWER: H.R. 1716 would change current law (2CZC s235) to insert the term "Panama Canal Commission" for the term "Canal Zone Government and the Panama Canal Company" [see Sec. 212 (e)], and to substitute the phrase "areas and installations in the Panama Canal Treaty of 1977 and related agreements" for the term "Canal Zone" [see Sec. 2(d)]. Section 252 of H.R. 111 would do the same and would also insert after the phrase "available funds" in current law the phrase "appropriated to the Commission." Accordingly, the two bills provide adequate authority for the Commission to continue the current Canal agencies' authority in the area of disaster relief. On the other hand, neither the current Canal Zone Code, nor either of the two bills, treat the authority of the military to perform disaster relief functions.

Mr. HUBBARD. Thank you very much. I know that in your answers to questions for the record, you may have indicated what things have to be done in the Canal Zone by the U.S. military to carry out U.S. obligations under the Panama Canal Treaty.

Could you tell us exactly what is to be done by the military, and the legislative authority for these actions?

Mr. DUNCAN. Well, the military will assume certain of the functions formerly done by the Panama Canal Company. We will be transferring from either the Panama Canal Company or the Panama Canal Zone Government approximately 3,400 employees to the Department of Defense. They will exercise responsibility for such functions as hospitals, postal service, et cetera.

In addition, there are certain military bases and facilities that we will have to turn over to the Panamanians. There are portions of three bases that must be turned over to the Panamanians; two on the date of the treaty, and one within 5 years.

As I understand it, there are no other mandatory transfers of bases that the U.S. Government now has; excepting those noted above plus a small number of housing units and some training areas, there are no others mandated by the treaty. In order to relocate the forces to accommodate those changes, there will be military construction expenditures; about \$10.9 million of which has already been committed. I think the fiscal year 1980 budget has another \$6 million, and the fiscal year 1979 supplemental had about \$29.7 million—a total of approximately \$40.6 million in military construction. All of this is oriented toward uses for which we feel our forces will have a need until the year 2000.

Mr. HUBBARD. During the life of the Panama Canal Treaty, what mechanisms are being set up to coordinate the operation and the security of the Panama Canal?

Mr. DUNCAN. First, there will be a Committee called the Combined Board, established with the Panamanian military, the Guardia Nacional. They will concern themselves with the defense of the canal. Undoubtedly, U.S. forces and the Guardia Nacional will conduct joint exercises and will undertake joint planning. But the primary responsibility for the defense of the canal, of course, remains with the U.S. forces until the year 2000. Second, a joint committee will be established to coordinate the Status of Forces Agreement.

Mr. HUBBARD. The testimony of the State Department indicates that it may be the Department of Transportation rather than the Department of Defense which oversees canal affairs. In H.R. 111, which I cosponsor along with Chairman Murphy, the Commission is specifically made subject to the Secretary of Defense.

Do you think that it is beneficial to have some certainty as to which agency will have the oversight function, as compared with the uncertainty we face with the present posture of a possible switch in 30 months?

Mr. DUNCAN. I think it is clear that the President intends at this time that the Department of Defense have, the oversight responsibility. As I indicated in my testimony, I think it is appropriate that, the senior foreign affairs officer of the U.S. Government, the President, should have the flexibility to change that. I am not aware of any decision having been made to change oversight from

the Department of Defense. I understand that it will be reviewed periodically which I think that is appropriate. But I believe as I said in my testimony, that the integration of the defense and the operating responsibilities under DOD is appropriate at the present time.

Mr. HUBBARD. Have you had a chance to study H.R. 111?

Mr. DUNCAN. I have looked at portions of it in the briefing book that I have before me. I have general familiarity with the bill. I have not read the bill in detail; I think I am familiar with the issues, though, that are raised by the bill and the differences proposed in it.

Mr. HUBBARD. Do you have any objections to this bill?

Mr. DUNCAN. Yes; I think the example we talked about, the preservation of Presidential flexibility in delegating his oversight responsibility, is something that is desirable and provided for in the administration's bill.

I understand that one of the issues raised in H.R. 111 is that the new Commission be an appropriated fund agency, as opposed to a U.S. Government corporation. I think the latter is far preferable, because when you are determining what your cash surplus might be and when you are making judgments from an accounting determination as to what payment may or may not be due to the Government of Panama, I think it is desirable that the Commission be operated as a business more than as an appropriated funds agency. I also think that there would be a driving control to keep costs down, and that would have a favorable impact on tolls, which may not be the case to the same extent if the Commission were operated as an appropriated funds agency.

Mr. HUBBARD. One last question from me.

Mr. DUNCAN. There were several other issues there. The first one, which I have just mentioned, is appropriated funds agency versus a Government corporation. The second issue is authority for transfer of U.S. property. The third issue is U.S. control of military in wartime. The role of the Secretary of Defense, we have already talked about; congressional confirmation of the members of the Board of the Panama Canal Commission; the composition and responsibilities of the Consultative Committee. Those are the principal points that I had, Mr. Chairman, responding to your question.

Mr. HUBBARD. Thank you. Again, one last question. In view of the fact that the Department of Defense indicated on many occasions during the treaty debates that U.S. authority for defense of the Panama Canal was virtually unlimited to the year 2000, is there any reason why the appointment of a military officer for control of the canal in wartime would be in conflict with the terms of the new treaty arrangement?

Mr. DUNCAN. I think it moves away from the spirit and the thrust of the treaty in this respect, Mr. Chairman: The treaty specifically calls for Panamanian participation in the management of the Panama Canal Commission. Now, until the year 2000, the United States will have five members of a nine-member Board of Directors, giving the President full discretion to compose that Board and, through that mechanism, to have anybody he chooses as the head of the operation of the Panama Canal. I think to give full and complete authority to a military commander in wartime,

to the exclusion of any Panamanian participation, would go against the thrust and the spirit of the treaty. I do think, though, that if the President concludes, between now and the year 2000, that it is desirable, for any reason, to have a military man in charge of the operations at the canal, he has got every legal mechanism to accomplish that, and that he can so direct that by advising the Board of Directors, which he will control, that that is his wish.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. Mr. Secretary, just, first of all, to touch upon the point you mentioned in your statement, you accurately described the transfer of a great number of functions now performed and financed out of canal tolls by the Canal Company and the government of the zone to the Defense Department: hospitals, schools, the postal system, and so on.

Am I correct to rely on the estimate that I received during the Senate debate on the treaty that this will cost, in current dollars, roughly \$66 million, for a two decade cost of about \$1.3 billion, if we do not even account for inflation? I ask that question because, as previous witnesses testified this morning, I recalled to them that this is going to be self-sustaining and it is not going to cost the taxpayers \$1, and in this case it would appear that it is going to cost \$1.3 billion.

Mr. DUNCAN. The Panamanian Government will get their share of toll revenue, which is 30 cents per Panama Canal ton; an annual annuity payment of \$10 million; and an additional up to \$10 million, if earned.

Mr. BAUMAN. I am not concerned about that. The question I am putting to you is the cost of the functions now performed by the Panama Canal Company and the zone government that are being transferred to the Department of Defense for American employees, their children, the hospitals, and so on; all of these are now operated out of the funds of the tolls. This is to be transferred to your department, as your statement indicates.

Am I correct in my estimate that this will cost about \$66 million annually?

Mr. DUNCAN. I am not able to respond precisely to that question. Can you get a line on that, General Dolvin?

General DOLVIN. That question, I believe, Mr. Bauman, is the same one you addressed this morning.

Mr. DUNCAN. I would be happy to try to develop figures for that for you, but I do not have it now.

Mr. BAUMAN. Do you mean to tell me that you came up here to testify this morning to say that you have all these functions being dumped on you and you do not know what it is going to cost?

Mr. DUNCAN. Well, many of these costs—for example, exact labor costs—I do not think they are precisely determined as yet.

Mr. BAUMAN. Even a rough estimate?

Mr. DUNCAN. I do not have a rough estimate; no. I do not have a basis to agree or disagree with any figure at the moment, but I would like, before I accepted the figure, to have an opportunity to look at it in more detail.

Mr. BAUMAN. Well, if you could give that to the committee before we go down there, it would be interesting to know.

Mr. DUNCAN. I will be happy to provide that information through Department of State which will be responding to your earlier question on costs.

[The material was provided by the Department of State and is included with the testimony of those witnesses.]

Mr. BAUMAN. It has been a long time since these treaties were signed and ratified, and it seems to me that at some point, we ought to be able to know what they are going to cost.

There was a statement made by Mr. Hansell in earlier testimony that one of the reasons he opposed the Murphy bill's provision about designating the Secretary of Defense as the head of the Commission is because at some point they might want to switch this over to the Department of Transportation.

Can you foresee, given the strategic value of the canal and given that value to this Nation, a point where the Department of Defense would want to relinquish control of the Commission or the Secretary would want to step out and hand it over to someone who runs Amtrak?

Mr. DUNCAN. Well, at the present time, I think it is desirable that it be done by the Department of Defense and, of course, that is the President's decision, too. But I do not think it is unrealistic to say that there could be some point in the future when it might be more desirable to have it in the hands of another agency. I could not tell you when that might be or if, in fact, it ever might be. But at the present time, I think the preservation of flexibility on the question is a thing to be preserved.

Mr. BAUMAN. There is nothing to prevent the President from coming back and asking that we write that into the law. The history of the operation of the Canal Company has been that it has always been an American military, Corps of Engineers official that has run it. We heard a lot of stress laid in the earlier testimony about the need to keep things as they are and the benefit of the current system.

It seems to me that to write that into the law, placing the Secretary of Defense, as the Murphy bill does, is a perfectly logical and correct step and would assure continuity. It would not make the State Department very happy, but in the administration bill, there is nothing; the President could appoint the head of EPA as the head of the Panama Canal Commission.

It is only in these hearings that I have learned of the determination of the administration to name people from the Defense Department to these posts. I do not in any way question the President's word, but he may not be here after the next election; none of us may be. I do not ask you to comment on that, but I do have another question.

I raise this on behalf of my colleague, Mr. Hansen: Why on earth, after the Congress specifically told the Defense Department, in the form of a communication from the chairman of the Military Construction Appropriations Subcommittee, Mr. McKay of Utah, not to spend \$10.9 million to implement the treaty—why did you go ahead and do it and on what authority and what legal right do you have to do that for military construction for which a contract has already been let to a North Carolina firm? What is your authority and why did you do that?

Mr. DUNCAN. That was urgently requested by the Commander in Chief of the Southern Command who, by coincidence, happens to be sitting right behind me.

Mr. BAUMAN. A man that I greatly respect; I had an excellent briefing from him when I was down there last, and he told me more than all the State Department people and the embassy people that I saw down there.

Mr. DUNCAN. I think highly of him, too; I think he is a very fine commander. I discussed it with him personally before I approved that. He assured me that in order for us to carry out the provisions of the treaty that required the transfer of two military facilities on October 1, this year, for him to be ready to move the forces to their new locations and to have those installations ready to receive those forces, it was urgently necessary that this portion of the \$10.9 million of the total package that I estimate to be something like \$40.6 million in military construction for fiscal year 1979 had to be started immediately.

We talked to all four committees of the Congress—the Appropriations and the Armed Services Committees. I went to our General Counsel and I said, “What about the legality of making this expenditure from the Secretary of Defense’s discretionary expenditure fund?” I was told by her that that was perfectly legitimate. I understand that that has subsequently been reviewed by the GAO and they have confirmed the fact that it was a legitimate use of those funds.

Mr. BAUMAN. Well, I beg to differ with you, Mr. Secretary.

Mr. DUNCAN. I feel that we are on legal grounds, and also good substantive grounds.

Mr. BAUMAN. It is my information that the General Accounting Office did not quite act up to snuff, and have agreed with Congressman Hansen’s request for a re-examination of their report, and it may well not clear you as having legal authority to do this. Now, that is second hand; I was told that by the Congressman this morning.

Mr. DUNCAN. I have a copy of the letter from the GAO with me.

Mr. BAUMAN. Well, I understand they are reconsidering it. The point I am making is to refer to a situation where my colleague from Michigan, Mr. Dingell, earlier this morning before you arrived was highly critical of the way this administration handled the House of Representatives.

The question of disposition of property was one of the major issues in this whole debate, and whether the House should vote. In the face of all of that, you go ahead. I am not blaming General McAuliffe or yourself; I know where the pressure came from. But it seems to me that it is just another example of the administration end-running around the Congress.

If the State Department had followed the same course, they would not have even asked us for implementing legislation. They would have gone and done what they wanted.

Mr. DUNCAN. Well, I have no intent to end-run the Congress. In fact, I wrote Chairman McKay. I asked Jack Stempler, who was leaving at that very moment on a trip with Chairman McKay, to explain it to him; he did have a conversation with Chairman McKay.

I have a copy of the letter here, dated January 3, 1979, directed to Hon. George Hansen, and that is the letter to which I referred, which I think confirmed the fact that we had a good legal basis.

Mr. BAUMAN. You do not have any present plans to go ahead and spend any more money until the Congress acts, do you?

Mr. DUNCAN. No. We have some additional funds, about \$29 million, in the fiscal 1979 supplemental appropriation request, and there is another \$6 million in the fiscal 1980 appropriations request. Assuming that that is properly approved by the Congress, we would go ahead with those expenditures, too, but those are now before the Congress.

Mr. HUBBARD. Do you have any objection to that letter you referred to a moment ago being entered in the record?

Mr. DUNCAN. No, sir, none at all. It is a copy of a letter that was directed by the GAO to Hon. George Hansen.

Mr. HUBBARD. If you would, please, enter that into the record. The staff will take note.

[The following was received for the record:]



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

Duncan

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January 3, 1979

The Honorable George Hansen
House of Representatives

Dear Mr. Hansen:

This is in response to your letters of November 6 and 17, and December 5, 1978, requesting our investigation and legal determination of the propriety of construction by the Department of the Army (Army) in the Panama Canal Zone (Canal Zone) for relocation of military installations, in anticipation of the effective date of the recently ratified Panama Canal Treaties. An additional December 4, 1978, letter, from you, cosigned by 19 other Congressmen, summarizes and reiterates your concerns.

Your letters raise two principal questions; first, whether it is legal for the Army to use its appropriated funds for the realignment of military bases in the Canal Zone; and second, the propriety of the award of a fixed price contract without advertisement for bids to J. A. Jones Construction Company to undertake the construction needed to realign those bases. Pursuant to an agreement with your office, this response will be limited to the first point. We have written to the Army for information concerning the J. A. Jones contract, and will report on it later.

In your letters, you state that section 817 of the Department of Defense (DOD) Appropriation Authorization Act, 1979, Pub. L. No. 95-485 (October 20, 1978), would prohibit the Army from using any of its funds for the realignment of military installations in the Canal Zone in implementation of the Panama Canal Treaties. The determination by Deputy Secretary of Defense C. W. Duncan, Jr., on October 4, 1978, to use \$10.9 million of funds for military construction purposes for implementing the Panama Canal Treaties, is, in your view, in defiance of section 817 and its legislative history.

Section 817 of Pub. L. No. 95-485 states:

"None of the funds authorized to be appropriated by this Act shall be used for the realignment of any military installation in the Canal Zone unless such use is consistent with the responsibility of, and necessity

for, the United States to defend the Panama Canal or with legislation which may be enacted to implement the Panama Canal Treaties of 1977." (Emphasis added.)

Some discussion of the history of section 817 is necessary. During floor debate on H. R. 10929, 95th Congress, the 1979 Defense authorization bill, as reported by the House Armed Services Committee, you introduced an amendment. This amendment, adopted on the House floor, eventually became section 813 of H. R. 10929. It provided as follows:

"Notwithstanding any other provision of law., none of the funds authorized to be appropriated for the Department of Defense by this or any other Act shall be used directly or indirectly for the purpose of effecting any force reduction or base realignment in the Panama Canal Zone in support of implementation of the Panama Canal Treaties approved by the United States Senate in 1978 without a specific Act of Congress." (Emphasis added.) See 124 Cong. Rec. H 4560-1 (daily ed., May 24, 1978).

There was no similar provision in S. 3486, 95th Congress, the Senate-passed Defense authorization bill. However, Senate conferees offered an amendment which restricted the expenditure of funds authorized to be appropriated in the bill for the realignment of any military installation in the Canal Zone (but not for "force reduction") to such use as is consistent with the responsibility and necessity for the United States to defend the Panama Canal. It also eliminated the broad applicability of the restriction to funds authorized to be appropriated "by this or any other act." The House conferees concurred. The conferees' language is identical to the language of section 817 of the Act. See H. R. Rep. No. 95-1402, 56 (1978).

The bill agreed to in conference and passed by both Houses (H. R. 10929) was vetoed. When the House failed to override the veto, S. 3486 was offered as a substitute and was ultimately enacted. S. 3486 was modified to meet the President's objections but was generally identical to H. R. 10929. In particular, as noted above, section 817 of S. 3486 and of the Act is identical to section 813 of H. R. 10929 as agreed to in conference.

The language change made by the conferees to what is now section 7 of the Act supports the view that the prohibition against the use of DD funds for the realignment of military installations in the Canal

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Zone is applicable only to those funds authorized to be appropriated by that particular authorization act. H. R. Rep. No. 95-1402, supra; 124 Cong. Rec. H 11495-6 (daily ed., October 4, 1978) (colloquy between Rep. Price and Rep. Hansen). Thus section 817 restricts the use of funds authorized to be appropriated for procurement of aircraft, missiles, torpedoes and other weapons, and for research, development, testing and evaluation, but does not appear to cover any other DOD activity or expenditure.

The Army states that the work being undertaken and accomplished for the realignment of military installations in the Canal Zone will be accomplished, not with funds authorized by Pub. L. No. 95-485, the 1979 Defense Appropriation Authorization Act, but pursuant to the authorization contained in the emergency construction provision of the Military Construction Authorization Act, 1978, Pub. L. No. 95-82, section 402, 91 Stat. 369 (1978), and that the work is financed from appropriations under the Military Construction Appropriation Act, 1978, Pub. L. No. 94-101, 91 Stat. 837. (By virtue of section 111 of the Military Construction Appropriation Act for FY 1979, Pub. L. No. 95-374, the 1978 funds remain available for the same period as the 1979 funds.) We have been informed that no funds obligated for the Army's current activities in the Canal Zone which you question have been appropriated pursuant to the DOD Appropriation Authorization Act, 1979, supra. We can find no similar prohibition against the expenditure of funds for the realignment of bases in the Canal Zone in the language of the Military Construction Authorization or Appropriation Acts, supra, from which funding for the questioned activities derives.

Section 402(a) of Pub. L. No. 95-82, supra, contains the emergency construction authorization relied on by the Army. This section states:

"The Secretary of Defense may establish or develop installations and facilities which he determines to be vital to the security of the United States and, in connection therewith, may acquire, construct, convert, rehabilitate, or install permanent or temporary public works, including land acquisition, site preparation, appurtenances, utilities, and equipment, in the total amount of \$20,000,000. The Secretary of Defense, or his designee, shall notify the Committees on Armed Services of the Senate and House of Representatives, immediately upon reaching a final decision to implement, of the cost of construction of any public works undertaken under this section, including real estate actions pertaining thereto." (Emphasis added.) See also Pub. L. No. 95-336, section 102, 92 Stat. 567 (1978).

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The notification required by section 402(a) of the Military Construction Authorization Act of 1978, *supra*, was given on October 4, 1978, by Deputy Secretary of Defense Duncan to the Armed Services Committees of both the Senate and the House. This is the only statutorily required notification required for the expenditure of funds for emergency construction, although a notification was also provided to the House and Senate Appropriations Committees.

The Conference Report on the 1979 Military Construction Appropriation Act, Pub. L. No. 95-374, 92 Stat. 707 (1978), includes the following comment on the use of military construction funds for Canal Zone purposes.

"Panama Canal: The conferees agree that funding for military construction in the Panama Canal Zone should be the subject of review by the House and the Senate, but that limited prior approval reprogramming of emergency construction required for the realignment of military installations consistent with the responsibility of the United States to defend the Canal and provide for the security of U.S. personnel may be necessary before a budget amendment or supplemental could be acted on by the Congress. In such event, the requirement and emergency nature of such construction must be certified by the President of the United States before submission to the Committees on Appropriations of the House and Senate." H. Rep. No. 95-1495, 3 (1978).

The Act does not incorporate this requirement. President Carter issued a memorandum for the Secretary of Defense on October 3, 1978, citing the above language and certifying that the construction of certain relocation projects in the amount of \$10.9 million is essential to the national interests of the United States. As previously mentioned, this certification, together with the statutorily required notice, was submitted to the aforementioned Committees.

While Chairman McKay of the House Military Construction Appropriations Subcommittee stated that "the committee has denied the Department's request" of October 4, 124 Cong. Rec. H. 12370, (daily ed., October 11, 1978), the relevant statutory language does not require approval from the Appropriations Committees. See section 402(a), Pub. L. No. 95-82, *supra*. The legislative history indicates that Chairman McKay felt that there should be congressional approval of such expenditures (see 124 Cong. Rec. H. 8865 (daily ed.,

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August 17, 1978) (colloquy between Rep. Bauman and Rep. McKay)). However, as acknowledged in that history, agencies are not legally bound to follow directives expressed in Committee reports or other legislative history, where those expressions are not explicitly carried over into the statutory language of a lump-sum appropriation. Matter of LTV, 55 Comp. Gen. 307, 321 (1975); cf., TVA v. Hill, 46 U.S.L.W. 4673, 4683 (June 15, 1978). While legislative history is important, the language of the conference report does not have the force of law. A degree of flexibility is desirable in carrying out dictates of legislation and the operation of the departments and agencies. If Congress desired to have the ultimate approval of funds expended for Panama Canal purposes under the Military Construction Authorization Act, it could have used language in the legislation which would require such approval. 55 Comp. Gen. 812, 820 (1976).

In conclusion, section 817 of the DOD Appropriation Authorization Act, 1979, *supra*, does not prohibit the current expenditures by the Army for the realignment of military bases in the Canal Zone. These funds have been authorized and appropriated through the DOD Military Construction Authorization and Appropriation Acts in which no such prohibitory language exists. Also, all statutory notice requirements have apparently been met by the Army before these funds were expended.

Year November 17 letter also argues that the Brooke reservation to the Panama Canal Treaty would prohibit the use of any United States funds and expenditures for implementation or pre-implementation purposes, at least until March 31, 1979, in the absence of a congressional enactment to the contrary. The Brooke reservation to the Panama Canal Treaty is as follows:

"Exchange of the instruments of ratification of the Panama Canal Treaty and of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal shall not be effective earlier than March 31, 1979, and such Treaties shall not enter into force prior to October 1, 1979, unless legislation necessary to implement the provisions of the Panama Canal Treaty shall have been enacted by the Congress of the United States of America before March 31, 1979."

From our review of the limited legislative history of the Brooke amendment to the Treaty, we conclude that its primary purpose was to delay the effective date of the Panama Canal Treaties, to provide more

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time to study and debate the provisions of whatever implementing legislation might be necessary. We see no evidence that the amendment was intended to prohibit the use of United States funds otherwise available for expenditure without further legislation, even though the activity supported is related to or is in anticipation of a later effective date of the Treaty. As originally drawn, the Treaty was to become effective 6 months after exchange of the instruments of ratification (Art. II). The Brooke reservation first delays the effective date of the exchange of instruments of ratification until at least March 31, 1979. Second, the Brooke reservation allows the Treaties to enter into force no sooner than October 1, 1979, unless implementing legislation has been enacted before March 31, 1979. As Senator Brooke stated when he introduced the amended version of his reservation:

"The effect of the reservation is to provide Congress a maximum period of approximately 1-1/2 years to enact the necessary legislation. This should be sufficient time to do the proper job on a very complex piece of legislation. Moreover, it would provide us with an opportunity to monitor the drift of events in Panama and elsewhere that would have an impact on U.S. capacity to manage the canal over the next 20 years or so. Given the emotions that have been evoked by this issue, I see great merit in not feeling forced to proceed immediately with the implementing legislation if the decision is made to ratify the Panama Canal Treaty."

* * * * *

"There is an additional important reason why sufficient time should be allowed to pass the implementing legislation. If the treaty came into effect before the United States has passed the legislation, we would find ourselves in the rather untenable position of being bound by a legitimate international obligation but unable to carry out our responsibilities under it. Such a situation would, at a minimum, be damaging to our international image." 124 Cong. Rec. S 5637 (daily ed., April 17, 1978).

There is no mention in the debates on this reservation that it would prohibit Federal expenditures of funds in the Panama Canal Zone. See *id.*, S 5637-5640. As the floor manager of the Treaty stated, in commenting on the reservation:

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"The proposal which the Senator from Massachusetts is now offering places the maximum impetus for arriving at the implementing legislation without making the treaty action an empty one or a hoax on the other party [Republic of Panama]. He has calculated a timespan which I think is reasonable under the circumstances. It in effect embraces the balance of this Congress and, if we are really not able in that period of time to finally enact the implementing legislation, it gives us an opportunity at the beginning of the next Congress to have almost 3 months in which to enact the implementing legislation." Id., S 5639.

The Brooke reservation serves only to assure that the Treaty does not go into effect before October 1, 1979, unless implementing legislation is passed before March 31, 1979. As Senator Brooke stated during the debate on his reservation:

"Failure of the United States to be in a position to implement its part of the agreement immediately when the treaty would go into effect would create a very difficult problem and greatly complicate the effort to manage the canal until the end of the century." Id., at S 5637.

While the Army is presumably acting in terms of its assessment of requirements in light of the Treaty provisions, we find nothing in the Brooke reservation which purports to restrict the use of appropriated funds for operations consistent with the purposes of those appropriations. This is so irrespective of whether or not the activities involved are characterized as implementation of the treaty. As stated above, the only statutory restriction is in the DOD Appropriation Authorization Act, 1979. Funds appropriated for military construction are not subject to the restriction and section 402 funds are clearly available for the purposes in question.

Moreover, an interpretation that the Brooke reservation would prohibit the use of any United States funds for the purposes in question would be inconsistent with Congress' actions in enacting section 817 of the 1979 DOD Appropriation Authorization Act, supra, and with the statements contained in H. Rep. No. 95-1495, supra. In those instances, Congress assumed that some actions might be taken by DOD in connection with realignment of its forces in Panama as a result of the Treaty, and limited the expenditure of funds for this purpose, as previously discussed.

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Obviously, such a limitation in that Act would be unnecessary if the Congress believed that the Brooke amendment already prohibited such expenditures.

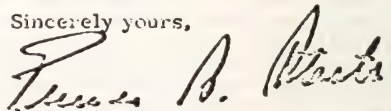
Similarly, the Conference Report requirement for prior reprogramming approval of emergency construction expenditures in the Panama Canal Zone would also be unnecessary if no such expenditures could be made for the balance of the fiscal year, pursuant to the Brooke amendment.

We therefore find no basis in its language or history to conclude that the Brooke reservation prohibits the use of the Army's emergency construction funds under the Military Construction Authorization Act or any other Act for authorized purposes.

The executive branch, in proceeding under the above authority, however, should recognize that the authority so granted could be modified or repealed in the implementing legislation contemplated by the Brooke reservation. Such action would not be inconsistent with the stated purposes of the reservation, that is, to permit Congress an opportunity to apply, through the implementing legislation, such conditions as might be desired in the light of further considerations that may be involved in implementing the treaty. The agencies concerned, therefore, are proceeding subject to this risk.

We trust that the foregoing will be helpful.

Sincerely yours,



Comptroller General
of the United States

ADDITIONAL QUESTIONS ANSWERED BY DOD

QUESTION #1: The Panama Canal Treaty and Related Agreements spell out a number of changes to be accomplished in the canal area. In terms of those activities, defense and related, over which the Department of Defense has jurisdiction in the Canal Zone which changes will be made pursuant to the terms of the implementing legislative package now before the Congress, and which are being accomplished pursuant to other legislation or appropriations acts, and which are being accomplished without legislation?

ANSWER: The treaty related activities of the Department of Defense fall under one of the following categories: (1) continuing canal defense responsibilities; (2) restationing of military units resulting from transfer of certain facilities and areas to Panama; (3) assumption of certain functions from the Canal Zone Government (CZG); (4) expansion and/or modification of existing base support operations (BASOPS) to provide administrative, logistical and recreational support to the U.S. civilian employees, and their dependents, of the Commission; and (5) addition of certain functions, formerly provided by the CZG, to meet self support requirements.

Discussion of Categories:

(1) Continuing canal defense responsibilities will remain essentially the same in so far as force levels and resource requirements are concerned. Panama's participation in canal defense is expected to be gradual. Combined planning and field exercises can be carried out within the limits of projected training budgets and authorized FMS resources.

(2) The requirement to restation military units has resulted in the following Military Construction Programs.

(a) FY 79: \$40.6 Million (\$10.9 Million, SecDef Contingency Fund; \$29.7 Million, supplemental request)

(b) FY 80: \$6.0 Million

(3) DoD will assume the following functions from the CZG: (HR 1716)

(a) Educational services for dependents - ASD(MRA&L) (Section 232b)

(b) Postal Services - Department of the Air Force (Section 341)

(QUESTION #1 Continued)

(c) Mortuary services - Department of the Army
(Section 232b)

(d) Cemeteries - Department of the Army (Section 232b)

(e) Health Services - Department of the Army
(Section 232b)

(4) The following BASOPS functions will have to be increased or modified to support the added civilian component. (DoD appropriations bill)

(a) Base operation support to dependent schools -
Department of the Army

(b) ADP support and finance and accounting office
support for DoD dependents schools - Department of the Air Force

(c) Commissary services - Department of the Army

(d) Post Exchange services - Army and Air Force
Exchange

(e) Recreational Services - Appropriate Military
Department

(f) Base operations (less DoD dependent schools) -
Appropriate Military Department (includes such activities
as supply operations, maintenance of materiel, transportation
services, personnel services, utilities, maintenance of real
property, general engineering support, and administrative
services).

(5) The following functions must be added to provide
services formerly provided by the CZG: (DoD appropriations
bill)

(a) Refuse collection and Defense Sites/Areas of
Military Coordination - Department of the Army

(b) Fire Fighting Support on military facilities
(coordinated with available community support).

QUESTION #2: During the duration of the Panama Canal Treaty of 1977, how is it planned that the defense and operation of the Panama Canal be integrated?

ANSWER: The Panama Canal Treaty gives to the U.S. the primary responsibility for the defense of the Panama Canal, through the remainder of this century. It provides for increasing Panamanian participation in the canal defense role, and combined planning and training exercises. The Treaty also gives to the U.S. the unilateral right to determine its own force levels to be stationed in Panama, subject only to the caveat of endeavoring not to increase the level of forces in normal times. The Agreement in Implementation to Article IV of that treaty sets forth the rights and obligations of U.S. forces stationed in Panama during the life of the treaty. Specifically, our forces have the unimpeded right of free movement in Panama, the unimpaired use of the military facilities listed in Annex A of that agreement and delineated in the set of maps accompanying that agreement. The use of our training areas by Panamanian military forces under agreed schedules is also provided.

HR 1716 also maintains the military chain of command between the President and the unified command commander--in this case Lt General McAuliffe's U.S. Southern Command--by highlighting the military commander's exception from the general authority of the Ambassador under 22 USC § 2680a.

QUESTION #3: There are provisions in both HR 111 and HR 1716 which address the question of interagency transfers and reimbursements for services. Are the provisions of both bills adequate to accomplish the provision of services across agency lines as contemplated by present Executive authorities?

ANSWER:

a. Cross Servicing Agreements in effect requiring reimbursements between DoD and other federal agencies in Panama are as follows:

<u>SUPPLIER</u>	<u>RECEIVER</u>	<u>SERVICE</u>
1. 93d Bde	USAID	Stor of Supplies
2. 93d Bde	Smithsonian	Util Bldg Rental
3. 93d Bde	Pan Can Company	Printing
4. 93d Bde	FAA	Sewage Disposal
5. 93d Bde	FAA	Repair Parts
6. Naval Station	Pan Can Company	POL Related
7. Naval Station	USAID	Warehousing
8. Naval Station	CZC	Firefighting Site
9. Naval Station	Pan Can Company	Radio Receiver Equipment
10. Naval Station	Pan Can Company	Space Rental
11. Naval Station	Pan Can Company	Barge Services
12. Naval Station	Pan Can Company	Fuel Oil
13. Naval Station	FAA	Admin Support
14. 24 Comp Wing	FAA	Admin Support
15. 24 Comp Wing	Pan Can Company	Calibration Support
16. USACC	US Embassy	Maintenance Service
17. USACC	USAID	Commo Service
18. USACC	FBIS	Commo Maintenance
19. Pan Can Company	193d Bde	MilVan Services
20. Pan Can Company	193d Bde	Firefighting Services
21. Pan Can Company	Naval Station	Repair Facilities
22. Pan Can Company	Naval Station	Oil Pollution Control
23. Pan Can Company	Naval Station	Fuel Oil
24. Pan Can Company	193d Bde	Oil Pollution Control

b. Both HR 1716 and HR 111 adequately provide for the transfer of functions from the Canal Zone Government to another U.S. agency (Department of Defense) and for reimbursement of services provided to the Panama Canal Commission.

QUESTION #4: How should the labor management provisions of implementing legislation relate to the applicability of the Civil Service Reform Act's Title VII? What would be the effect of excluding non-Commission employees in the canal area from the terms of the statutory application of Title VII of the Civil Service Reform Act?

ANSWER: We see the Panama Canal Commission as a unique organization, with a work force which will be increasingly Panamanian at all levels. A labor relations system focused largely on local conditions and issues would appear to be most appropriate in terms of facilitating--or at least avoiding interference with--the gradual transition to Panamanian control of Canal operations. To lock the Commission into a labor relations system designed to deal with issues arising out of labor-management dealings in the United States Government environment could well prove counterproductive over the years. The Administration Bill proposes that all employees of the Commission, both U.S. and non U.S., be covered by a labor-management policy tailored to meet its unique needs.

U.S. employees of the Department of Defense and other U.S. agencies in Panama, on the other hand, will be performing functions very similar to those we perform in various other parts of the world. With the advent of a new Federal labor relations statute--Title VII of the Civil Service Reform Act--we see no reason why our United States citizen employees in Panama should not be subject to the same labor relations program policies as their counterparts in other overseas areas as well as in the continental United States. We believe, in fact, that U.S. citizen employees of the Department of Defense in Panama are currently covered by Title VII.

By the terms of Title VII, non-U.S. citizen employees of U.S. agencies employed outside the United States are excluded from its coverage. This provision combined with provisions of the Agreement in Implementation of Article IV, appear to mandate a labor relations system for Panamanian employees of Defense elements which is more attuned to local conditions and customs. It may well prove feasible to conduct labor relations with respect to our Panamanian workforce under the system established for the Panama Canal Commission.

QUESTION #5: Does the Executive prefer that U.S. military vessels transiting the canal pay tolls in lieu of the present regime under which the canal operating authority receives a credit with the U.S. Treasury for the transiting of such vessels?

ANSWER: HR 111 authorizes the President to require U.S. Government vessels to pay tolls. HR 1716 requires that these vessels pay tolls. To the extent that the President would require the direct payment of tolls by Government vessels, the two bills would be the same in this respect.

HR 111 provides that, if Government vessels are not required by the President to pay tolls, the amount of the tolls is to be computed and treated as Canal revenues for purposes of prescribing rates of tolls and calculating the payment to Panama under paragraph 4(a) of Article XIII of the Treaty. The purpose of this provision is to ensure that cost of transit for Government vessels is not subsidized from the tolls paid by commercial vessels and that the tonnage payment to Panama under Article XIII of the Treaty is computed fairly. HR 1716 does not require these provisions, since the direct payment of tolls by Government vessels treats them the same as all other Canal users and, therefore, automatically precludes any inequities arising from their transit of the Canal.

Paragraph 4(c) of Article XIII of the Treaty provides for the payment to Panama of up to \$10.0 million annually out of Canal operating revenues to the extent that such revenues exceed expenditures of the Panama Canal Commission. HR 111 would, by omission, exclude tolls calculated to U.S. Government vessels from being recorded as operating revenues for purpose of calculating this payment to Panama. This treatment is inconsistent with that afforded to the payment to Panama required under paragraph 4(a) of Article XIII of the Treaty. Under HR 1716, tolls paid by U.S. Government vessels would be automatically recorded as operating revenues of the Canal.

In our view, it is preferable (and virtually mandatory under HR 1716) that U.S. Government vessels be required to pay tolls directly to the Commission, the same as any other user. While this will involve DoD seeking appropriations for this purpose, it will alleviate many of the problems inherent in dealing with imputed tolls.

QUESTION #6: In view of the fact that the Department of Defense indicated on many occasions during the treaty debates that U.S. authority for defense of the Panama Canal was virtually unlimited, especially to the year 2000, is there any reason why the appointment of a military officer for control of the canal in wartime would be in conflict with the terms of the new treaty arrangements?

ANSWER: HR 1716 also repeals those provisions of the Panama Canal Code concerning military command of the canal operation under conditions of actual or imminent war. The repeal of these provisions is consistent with Article III of the Treaty, which establishes a Panama Canal Commission and states that "the Panama Canal Commission shall be supervised by a Board composed of nine members . . ." There is no provision in the treaty which provides for suspending the powers of the Board in wartime, nor is there a requirement for such a provision. The Board will always have a U.S. majority, under Section 206(c), HR 1716. Additionally, the President has stated his intention to appoint the U.S. members of the Board from already appointed senior officials of the executive departments having primary and collateral interests in the canal operation, with the DoD representative as the Chairman of the Board. Under the President's plan, coordination of canal operation and defense is assured, under conditions of peace and war, without the need for changes in the supervisory structure which would be quickly interpreted as a violation of both treaties.

The Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, as amended, gives to the U.S. the unilateral right to take whatever actions we should deem necessary, to include the use of military force, for the purpose of protecting the canal and assuring its neutrality. It also imposes a responsibility on both countries, to maintain that neutrality and to permit its use by all nations in peace and war. To impose a unilateral military command over the canal's operation for the purpose of interrupting the transit of other nations' military vessels, even should the U.S. be at war with one or more of those nations, would violate the Treaty. Our senior military leaders have emphasized that the deployment of enemy ships towards the canal, for the purpose of transit, would pose an inviting target to our naval and air forces--long before the enemy ships could reach the canal itself. Article VI of the Treaty, as amended, also provides that U.S. military vessels can, in times of emergency, transit the canal "at the head of the line."

In short, HR 1716, combined with the President's proposed executive actions, will ensure the integration of the Canal's operation and defense, compatible with our international obligations, and that our military vessels can transit the canal, under emergency conditions, as quickly as they are capable.

QUESTION #7: What are the advantages and disadvantages that will result from a regime in which the Panama Canal Commission is made subject to the direction of the Secretary of Defense?

ANSWER: The President intends that the Secretary of Defense, operating through the Secretary of the Army, will exercise the executive oversight responsibility for the Panama Canal Commission. This will provide for the continuation of the existing supervisory structure which has been so effective in the past. Placing the management responsibility of the new Panama Canal Commission under the Secretary of Defense will enhance the coordination of overall policy concerning those activities with other cabinet level departments of the executive branch and will also ensure that the canal's operation and its defense will be carried out through one centralized authority. To authorize the Secretary of Defense, or any other officer of the U.S., to "direct" the Commission would be contrary to the intent of the negotiating history of the Treaty. The purpose of including Panamanian nationals on the Board is to provide Panama a substantive although minority voice in the management of the Commission. The U.S. will have, under HR 1716, the final vote on the Commission's policies and activities.

HR 1716 provides the authority to the President to appoint the officer as he considers appropriate to exercise this oversight. The Administration considers it preferable that the President continue to have this authority.

QUESTION #8: What is the view of the Department of Defense with respect to the provisions of HR 111 and HR 1716 that allow agencies to opt in or out of the Panama Canal employment system? What is the rationale behind an option rather than the present mandatory character of the employment regime in the canal area?

ANSWER: Sections 142 and 149, which are very similar to language in the Administration's Bill, will give the Secretary of Defense and the head of any other executive agency the option to elect to have the Panama Canal Employment System apply to personnel of his agency in whole or in part.

The employment system currently in use in the Canal Zone is different in many respects from the system used by the Department of Defense in other foreign areas. These differences may become even more pronounced in the new system that will be developed to implement the new treaty. The new system or parts of it may be so drastically different from Defense practices elsewhere that it would create difficulties for us if we implemented them. These sections provide the flexibility needed to deal with this potential problem and Defense is very much in favor of them.

QUESTION #9: Are the provisions for disaster relief in H.R. 111 and H.R. 1716 sufficient to continue to accomplish the purposes of the relief operations that now emanate from the Canal Zone?

ANSWER: H.R. 1716 would change current law (20CFC s235) to insert the term "Panama Canal Commission" for the term "Canal Zone Government and the Panama Canal Company" [see Sec. 212 (e)], and to substitute the phrase "areas and installations in the Panama Canal Treaty of 1977 and related agreements" for the term "Canal Zone" [see Sec. 2(d)]. Section 252 of H.R. 111 would do the same and would also insert after the phrase "available funds" in current law the phrase "appropriated to the Commission." Accordingly, the two bills provide adequate authority for the Commission to continue the current Canal agencies' authority in the area of disaster relief. On the other hand, neither the current Canal Zone Code, nor either of the two bills, treat the authority of the military to perform disaster relief functions.

Mr. HUBBARD. Congressman Treen?

Mr. TREEN. Thank you, Mr. Chairman. I think I just have one question here.

On page 8 of the bill introduced by Mr. Murphy, H.R. 111, in title I, section 101, I read the first two sentences to get your response.

There is established as an agency and instrumentality of the United States, the Panama Canal Commission,

Which is consistent with the treaty, of course.

The Commission shall, under the general supervision of the Board established by section 102 of this act, and subject to the direction of the Secretary of Defense, be responsible for the maintenance and operation of the Panama Canal and the facilities and appurtenances related thereto.

Mr. Secretary, is that clause, "subject to the direction of the Secretary of Defense," objectionable from your point of view?

Mr. DUNCAN. Yes, I would have the same comments I made earlier.

Mr. TREEN. From a policy standpoint, it is objectionable to you.

Mr. DUNCAN. I am prepared, as the Deputy Secretary of Defense, and specifically representing the Secretary of Defense at this hearing, to say we are prepared to undertake the responsibilities that this implementing legislation envisions.

Mr. TREEN. I understand.

Mr. DUNCAN. But I think the preservation of Presidential flexibility is a very desirable option. I have no objection, as of this moment, that the Secretary of Defense have that responsibility and, in fact, the President has so designated.

Mr. TREEN. Does the inclusion of that, in your opinion, do violence to the treaty from a legal standpoint, if you are prepared to answer from a legal standpoint?

Mr. DUNCAN. I do not have the language right in front of me, but several other concerns arise in my mind when you say that. The language of that particular bill, I believe, also appoints a canal engineer, and things like that, when you talk about management and control. Some of those provisions cause me concern, because I think they move away from what has been negotiated in the treaty.

Mr. TREEN. Well, what causes me concern is that we are told that although the treaty specifically says that a nine-member Commission will, in effect, run this Panama Canal—and I have raised this question with respect to tolls—we are told repeatedly that we are going to have more control over all of this business than the treaty provides.

And then when we start writing some of the controls into this bill, we are told, "No, do not write those controls in." What I am trying to zero in on is whether or not it is the view of the administration that provisions such as the one I have just read—that is, "subject to the direction of the Secretary of Defense"—whether the objection really is a policy objection or whether, in truth, the administration believes that that is inconsistent with the treaty.

Mr. DUNCAN. I think it is inconsistent with the treaty in this respect: The treaty provides that there be Panamanian participa-

tion in the operation of the canal. Their minority representation on the Board provides them that avenue.

Mr. TREEN. Right.

Mr. DUNCAN. I think that when you say that all of these people serve subject "to the direction of the Secretary of Defense," you tend to mitigate against participation by Panama, which is what we labored so long and hard over several administrations to successfully negotiate. There is the Consultative Committee of equal representation in an advisory role, and it is my understanding that we got agreement on the composition of the Board of the Panama Canal Commission after letting them have an equal policy participation in the consultative committee.

When you consider all of the elements of the mix, the way it is structured is very consistent with the spirit of the treaty, and I think that to do anything now which would erode their sense of participation in the decisionmaking process—and they have agreed to a minority participation in the Board—is counterproductive in the long term.

The reason we supported the treaty so strongly is very simple. We believed that it was better to have a canal that would run efficiently, that would be viable, and that would remain open, and if someone were trying to close it, we would have rights, even by treaty, to do something about it, and we have that. We have that, with the agreement of the Panamanians as partners.

We think the canal is useful to us militarily if it is open; if it is not open, it is not useful. We think the best opportunity to preserve its being open is by going along on this basis with a strong sense of participation on the part of the Panamanians.

Mr. TREEN. I have one other question.

Mr. HUBBARD. Secretary Duncan, while he is looking for that question, let me ask, how would you feel about making the five U.S. Board members subject to the direction of the Secretary of Defense?

Mr. DUNCAN. Subject to the direction of the Secretary of Defense?

Mr. HUBBARD. Yes, the five U.S. Board members.

Mr. DUNCAN. Well, I think the five U.S. members of the Board will either be confirmed by the Congress or they will be reporting directly to people that are.

Mr. HUBBARD. Say that again.

Mr. DUNCAN. I thought you were referring, Mr. Chairman, to the five U.S. members of the Board.

Mr. HUBBARD. I am. They would be subject to the approval of Congress or reporting to whom?

Mr. DUNCAN. To people that are confirmed by the Congress; to Presidential appointees confirmed by the Congress.

Mr. HUBBARD. I see. Congressman Treen?

Mr. TREEN. I cannot find what I am looking for here, but could you just address yourself generally to defense rights after the year 2000?

Mr. DUNCAN. Well, after the year 2000, the Panama Canal Treaty terminates and the Neutrality Treaty continues in effect. But the Neutrality Treaty which enters into effect simultaneously with the Panama Canal Treaty preserves the regime of neutrality

without any termination date and thus preserves our right to use and defend the canal.

Mr. TREEN. What rights do we have to intervene? I know this has been debated all over the country, but in your judgment, as a Department of Defense official, what rights do we have after the year 2000 to go in there and preserve our military interests?

Mr. DUNCAN. The word "intervention," of course, has been debated a lot. We have no right to intervene in the internal affairs of Panama. What we do have a right to do is to take those actions that we deem to be necessary, either independently of or in concert with Panama, to keep the canal open, including the right to use military force for that purpose. That is my understanding of it.

Mr. TREEN. The debate will be whether it is internal intervention or not.

Mr. DUNCAN. The treaty provides us no right of internal intervention in the affairs of Panama.

Mr. TREEN. I know, but if you have got to go into Panama itself in order to accomplish the purpose you are talking about to keep the canal open—

Mr. DUNCAN. I think it provides us with the right to take those actions necessary to keep the canal open.

Mr. TREEN. Even though that might mean interference with the internal affairs? You cannot go in there with troops and not interfere with the internal affairs; there is no way, I do not believe. Now, if you all have figured out a way, I would sure like to know it.

Mr. DUNCAN. If the canal were to be closed by either a third country or by internal forces within the country of Panama, we are even obligated, as I understand the Neutrality Treaty, to keep it open.

Mr. TREEN. OK, Mr. Duncan. Thank you.

Mr. HUBBARD. Are there any other questions of Secretary Duncan or General Dolvin?

[No response.]

Mr. HUBBARD. Hearing none, we thank you for your participation, statements, and answers to our questions.

Mr. HUBBARD. I would like to call at this time Gen. Dennis McAuliffe. As he comes to make a brief statement, I would like to assure the people waiting, including newsmen and reporters, that it is our estimate that we can be finished by 1:15 or 1:20, because the remaining testimony is brief. We will not break for lunch, but will try to be finished by about 1:15 or 1:20.

General McAuliffe, you are the Commander in Chief of the U.S. Southern Command headquartered in the Canal Zone. Go ahead.

STATEMENT OF LT. GEN. DENNIS P. McAULIFFE, COMMANDER IN CHIEF, U.S. SOUTHERN COMMAND, PANAMA CANAL ZONE

General McAULIFFE. The U.S. Southern Command is the United States unified command responsible for U.S. security interests in Central and South America, and specifically charged with protecting and defending the Panama Canal.

I appreciate the opportunity to convey to this committee the importance of the proposed implementing legislation to the military forces in the Panama Canal area. Other witnesses, notably

Deputy Secretary of Defense Duncan, have and will testify on the overall importance of the legislation from the Department of Defense viewpoint, and the importance of that legislation to the continued efficient operation of the Panama Canal.

The primary mission of U.S. forces assigned and stationed in the Panama Canal area is and will continue to be defense of the Panama Canal. Under the terms of the Panama Canal Treaties effective October 1 of this year, Panamanian Armed Forces will participate in canal defense, under arrangements to be worked out by a combined board, the board consisting of senior military representatives of the United States and the Republic of Panama.

However, until the year 2000, primary responsibility for defense of the canal remains with the United States. Over a period of years, U.S. forces in the Canal Zone have been the key to stability in that area. They have been configured with an approximate mix of force capabilities to meet possible threats ranging from civil disturbance and sabotage to guerrilla attacks against vital canal installations.

Although the new United States-Panama relationship brought about by the treaties lessens the probability of the civil disturbance threat, it cannot be discounted. In view of the uncertainty of Panama's capability to rapidly take on defense responsibilities, the United States plans to retain for the foreseeable future the force capabilities we now possess in the Panama Canal area.

The treaty provides the U.S. forces with adequate bases for the forces there, provides adequate facilities to effect reinforcement, garrison areas, a logistical base and training facilities for the forces stationed in Panama and for forces periodically sent to Panama for jungle and tropical training and joint and combined exercises.

Certain relocations of military units are required in order to facilitate the treaty-driven transfer of portions of military areas to Panama. Such relocations have created an urgent requirement for military construction funds; these were alluded to by Secretary Duncan and are being addressed by other committees of the Congress.

However, the implementing legislation is required in order to accomplish the transfer of resources to the U.S. military services from the Canal Zone Government and Panama Canal Company, for adequate health care, dependent schools, and other personnel support facilities for those forces and their accompanying family members.

The proposed implementing legislation clarifies questions pertaining to employment systems and labor management relations systems. The implementing legislation is thus needed to insure that we on the Department of Defense side can retain and recruit certain key personnel, such as the medical doctors in the hospitals being transferred to us. Personnel turbulence can be avoided by the timely passage of the implementing legislation.

In summary, the proposed implementing legislation is important to the military forces that will be charged with canal defense from the time the treaties take effect on October 1 of this year to the end of 1999. Thank you, Mr. Chairman.

Mr. HUBBARD. Thank you, General McAuliffe. I have no questions at the moment.

Congressman Bauman?

Mr. BAUMAN. I also want to thank you, General, for your statement, and again commend you for the excellent presentation that I was given when I was down there last year. It was very helpful to understand not only what subsequently occurred, but now to deal with the situation of implementing the treaty.

How far along are you as far as any informal operations with the Panamanian Government toward joint military control that the treaty provides for? Have there been preliminary meetings; are lines of communication now established? Are you working with the Guardia Nacional on a regular basis?

General MCAULIFFE. First, let me thank you for your very complimentary comments, Mr. Bauman.

The treaty sets up two important committees—important to the military. One is called a joint committee which handles all matters pertaining to the status of forces in Panama. The second, the Combined Board, arranges matters pertaining to combined training and combined defense of the Panama Canal. Neither of these committees takes effect until October 1.

However, informal working groups have been established along the general lines of these two committees, and we are meeting regularly with Panamanian officers to try to identify and perhaps lay out certain agreed guidelines on how we are going to approach the various issues, problems and matters that will need resolution as we enter into a coordinated and combined defense effort in the future.

Additionally, let me say that my Army component command, the 193d Infantry Brigade, is going through its regular series of conventional training exercises involving its maneuver battalions. Interestingly, this year, for the first time since 1974, Panama has invited the brigade to use its largest training base, Rio Hato, which is located about 70 miles west of the Canal Zone on the Pacific side.

This training activity has been going on there since late January and will conclude next week. There is a certain amount of assistance being provided by the Panamanian Guardia Nacional; for example, military police to help us move convoys those 70 miles over the roads, and also police around the training area itself. But, also, they are providing officer observers to see how we operate, because they figure that perhaps next year, we may have a similar activity with some Panamanian units, on a small scale.

So I would say that, informally, we are working with the Panamanian military, and I can assure you that this work has been done in a most cooperative manner and, in fact, to an extent that I am encouraged with the results thus far.

Mr. BAUMAN. Would you characterize that as a change from the past relationship that you have had with the Guardia Nacional?

General MCAULIFFE. Yes, sir. I am completing my fourth year there, and I will say that I have never seen a level of cooperation of this kind.

Mr. BAUMAN. One last question. You mentioned the difficulty of retaining the essential employees to carry out the functions that the Defense Department will now be assigned—medical assistance, health, education, and so on.

We will be hearing the testimony directly when we are down there next week, but what, in your estimation, has been the attitude of the essential-type American employees? Are they willing to stay or, at this point, is there a morale problem?

General McAULIFFE. There is a morale problem due to the uncertainty of employment conditions affecting many of the employees. Concerning those functions that will transfer to the Department of Defense, through the cooperation of the Defense Department, the Department of the Army, and certain of the major commands, I have arranged for many groups from the Army and the Air Force in particular to come down to Panama and talk to those employees to assure them that they will be welcome under their new sponsorship and to find out the kind of problems that they perceive as they go into the treaty.

I think fundamental to everything that they perceive is the need to pass implementing legislation which will, as I indicated, confirm employment conditions that we have been talking about in a general way to them. Without that implementing legislation, it cuts the ground out from under the discussions and the encouragements that we have been trying to give those employees to stay with us.

Mr. BAUMAN. Has there been any indication of people leaving already? I heard a lot of comments when I was down there that if the treaties went through, "I have had it; I am not staying," and that kind of sentiment.

General McAULIFFE. Yes, there are employees from the Canal Zone who have already departed. The numbers, however, if you take it across the board of Panama Canal Company, Canal Zone Government, and Department of Defense, are not much larger than they have been in any average year.

There is a lot of talk about whether employees will stay or not. Specifically concerning the functions that will transfer to the Department of Defense, I have really found very little even rumor to the effect that those employees intend to go back to the United States. They really want to stay there, assuming that their conditions of transfer and employment—the ratings, and all that—will be continued.

Mr. BAUMAN. So they are really waiting to see what the Congress does?

General McAULIFFE. Yes, sir.

Mr. BAUMAN. Thank you.

Mr. HUBBARD. One last question. Have you studied, General, whether the provisions for transfer of U.S. property in House bill 111, if enacted, would pose any difficulties for the transfer of military facilities?

General McAULIFFE. Yes, sir, I have studied the bill. I do not believe that the transfer of military facilities to Panama at the inception of the treaty would be anymore affected by one bill or the other.

Mr. HUBBARD. Thank you very much, General McAuliffe, for your testimony and for your helpful cooperation.

General McAULIFFE. I appreciate the opportunity to testify, Mr. Chairman.

Mr. HUBBARD. Thank you, General.

Mr. HUBBARD. Next, the Department of Commerce witness, Mr. Samuel B. Nemirow, to be followed by the last witness, the Department of Transportation witness, Stephen A. Shefler. Mr. Nemirow is the Deputy Assistant Secretary for Maritime Affairs; he has served as the General Counsel of the Maritime Administration, is a member of the Maritime Subsidy Board, and has been with the Maritime Administration since 1972. Prior to joining the Maritime Administration, he was with the Department of Transportation and the Federal Maritime Commission.

Mr. Nemirow, we welcome you to our subcommittee, and look forward to your statement.

STATEMENT OF SAMUEL B. NEMIROW, DEPUTY ASSISTANT SECRETARY FOR MARITIME AFFAIRS, DEPARTMENT OF COMMERCE

Mr. NEMIROW. Thank you, Mr. Chairman. It is a pleasure to appear here this afternoon and to address the questions that have been raised by the various proposals for implementing legislation concerning the Panama Canal Treaties. I can assure you that I will heed your call for expedition, and I will try to limit my oral comments to those pertinent sections of my written testimony.

Mr. HUBBARD. Thank you very much, and we will probably have fewer questions for you than we have for some of the other witnesses.

Mr. NEMIROW. Thank you. As you know, the Department of Commerce has not in the past been substantively involved in the day-to-day affairs or the operation of the Panama Canal. However, the Department has always had a twofold interest in the canal: First, that the canal should be operated in an efficient, safe, and reliable manner so as to permit free access to world shipping lanes; and secondly, that U.S.-flag vessels be treated no less favorably than those of any other nation. We are satisfied that pertinent provisions in each of these bills would accomplish these objectives, but for a variety of reasons which we have stated in the text of this written statement, we generally prefer H.R. 1716.

I should note that we are also pleased that H.R. 1716 would permit the Department of Commerce to be represented on the Commission. And, furthermore, whether or not the Secretary of Commerce is a member of the Joint Commission on the Environment, we would expect to offer comments from time to time on matters involving the marine environment.

We have set out in our testimony five specific areas of interest to us, and I could go into that comparison now, if you would care to, or I could respond to questions on an item-by-item basis and work out some of the details with the staff, if that is your preference, Mr. Chairman.

Mr. HUBBARD. Go ahead.

Mr. NEMIROW. Fine. The first issue that we are concerned about is that section 202 of H.R. 1716 would delete the requirement that the Panama Canal Company pay into the U.S. Treasury interest on the investment of the United States in the canal. Conversely, H.R. 111 requires the continued payment of interest, as well as payment of amortization costs, with respect to the direct capital investment. We would recommend the scheme set forth in H.R. 1716 in order to

balance the policy objectives of both keeping the Commission self-sustaining and avoiding, where possible, excessive increases in tolls.

The second issue of concern to us is that the two bills, while they are similar in many respects as to the issue of damages, differ in that H.R. 111 would limit the ability of the Panama Canal Commission to settle administratively certain suits above \$60,000, and H.R. 1716 would place no such limit on settlement authority of the Panama Canal Commission. We prefer the approach set out in H.R. 1716 since in today's commercial environment, \$60,000 is not a very large number. It is our understanding that that was the settlement authority of the company from the years 1940 to 1951, and in our view, it is insufficient to use that number in 1979.

The third issue which gives us concern is that section 412 of H.R. 111 would continue the present practice of allowing the President to waive the collection of tolls on oceangoing training ships owned by the United States and operated by State nautical schools. Under H.R. 111, if tolls are not paid, the tolls would be computed as revenue for purposes of prescribing toll rates and computing the amount of payment to the Republic of Panama. We believe, however, that ultimately the burden of any such waiver would necessarily have to be imposed on other vessels transiting the canal, although this burden may be de minimus.

We do not believe that the continuation of the current practice is conducive to the policy objective of making the Commission self-sustaining. Therefore, we would recommend that section 232 of H.R. 1716 be adopted, which would require State school vessels to pay tolls as any other vessel. I would like to comment, however, that if section 232 is enacted, we will consider whether an amendment to section 4 of the Merchant Marine Act of 1958 is desirable or required to authorize reimbursement to the State schools for the tolls which they actually pay.

I would like to now address the statute of limitations question and compare H.R. 1716 and 111 on that matter. In the case of suits against the Panama Canal Commission, section 298 of H.R. 1716 provides for a statute of limitations patterned after that contained in the Federal Tort Claims Act. A claim would be required to be presented in writing within 2 years and action brought within 1 year after notice of final decision on the claim by the Commission. We favor the adoption of this H.R. 1716 provision because, in our view, it should promote expeditious disposition of claims.

Another technical issue is that the Canal Zone Code now requires that prior to the departure of a vessel involved in an accident or injury giving rise to a claim, an investigation by competent authorities must be completed and the basis for the claim must be presented to the Panama Canal Company. This provision would be amended by section 260 of H.R. 1716 to state explicitly that lack of knowledge that an accident giving rise to a claim has occurred does not excuse noncompliance with the requirements. H.R. 111 appears to be silent on that point. Therefore, for the sake of clarity, we prefer the approach adopted in H.R. 1716 of addressing this issue.

Mr. Chairman, you have asked that we respond to a series of six questions. The answers to those questions will be submitted for the record in the very near future; I hope that they will be up here this

afternoon. This concludes my testimony, and I will be happy to answer any questions you may have.

[The following material was received for the record:]

QUESTIONS OF COMMITTEE AND ANSWERED BY COMMERCE DEPARTMENT

QUESTION 1: Under the assumption that an initial increase in the rate of Panama Canal tolls in the range of 20% to 40% will be necessary in order to give the Panama Canal Commission, from the inception, a self-sustaining character, is it likely that under present circumstances U.S. merchant marine traffic through the canal will be affected?

The Suez Canal recently announced that they will impose no increases in tolls until 1980 or thereafter. Can this announcement, combined with the projected Panama Canal tolls increase result in a significant loss of traffic?

Answer: A toll increase in the range of 20% to 40% was estimated by International Research Associates (IRA), in a study completed January 1978, to result in a decline in Canal cargo movements of approximately 3.4% to 8.9% in 1985. This measure of sensitivity assumed a toll increase would be effective October 1, 1979, and the maximum impact of a rate increase would occur seven to ten years hence.

During the one year since the IRA analysis was completed, a number of changes have occurred which, in the aggregate, have tended to reduce the sensitivity of Canal traffic to toll increases. These include appreciation of foreign currency against the dollar; increases in ship charter rates; continued inflation, particularly increases in fuel costs and other ship operating costs; and changes in both the tonnage and mix of Canal cargo.

It is now likely that no measurable cargo loss would occur as a result of a 20% toll increase, and sensitivity at 40% could be much less than previously measured by IRA.

Nevertheless, the IRA study can be used as a guide to estimating the impact of toll increases on Canal traffic. In fiscal year 1978, U.S. flag vessels carried approximately 25.2 million long tons of cargo through the Canal. Of this total, 16.2 million tons was North Slope oil, and this trade was found to be insensitive to toll hikes in the range of 20% to 40%. If we assume the remaining 9.0 million tons of cargo moved in U.S. bottoms was sensitive to the same degree as total cargo, the maximum Canal cargo loss in these trades would be approximately 800 thousand tons.

Although this 800 thousand tons of cargo may no longer transit the Canal, much of it would not be lost to U.S. shipping. Much of the diversion would be in the form of rerouting of U.S. vessels and their cargoes to other alternatives to avoid use of the Canal. These alternatives include other ocean routes and landbridge and minibridge routes.

The above answer assumes no increase in Suez Canal tolls.

Question 2: What will be the effect on U.S. merchant marine traffic and on traffic involving the international trade of the United States of the alternative tolls formula set out in section 412 of H.R. 111 or section 232 of H.R. 1716?

Do the tolls formula provisions of both bills meet the requirements of the Long Reservation (Understanding No. 1 of the Resolution of Ratification on the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal, concerning the recognition of the trade patterns of the U.S. and Panama)?

Answer: H.R. 111 requires that tolls cover interest on and amortization of U.S. investment in the Canal. This requires some interpretation, but if we are talking about amortizing, for example \$225 million at 6 percent interest over 20 years, the Canal revenues will have to be increased by \$20 million per year to meet this provision. This translates into an immediate increase of about 10 percent over the current projected annual revenue. Under the Administration's bill, toll increases to raise revenues by about 20 percent are already required. Hence, H.R. 111 would require revenue increases of about 30 percent. According to a study prepared last year for the Panama Canal Company and the U.S. Department of State, Canal traffic sensitivity to tolls is such that, to increase revenue by 20 percent immediately, tolls would have to be increased by 20 percent. To increase revenue by 30 percent, tolls would have to be increased by about 32 percent.

The effects of toll increases in a range of 20 to 40 percent on the U.S. merchant fleet are discussed in the answer to Question #1.

The effects of a toll increase on the total cargo tonnage moving through the Canal, either to or from the United States could be similar to the effects on cargo moving in U.S. flag vessels. In fiscal year 1978, approximately 82.5 million tons of cargo moving between the United States and foreign countries passed through the Panama Canal. Applying the IRA findings that the Canal cargo loss resulting from a 40 percent increase in toll rates could amount to 8.9 percent of total Canal cargo in 1985 results in the estimate that 7.3 million tons of U.S. foreign trade may be diverted. Most of this cargo, however, would continue to move in U.S. foreign trade and would simply be rerouted to a lower cost alternative route, bypassing the Panama Canal.

Section 232(c) of H.R. 1716 and Section 412(d) of H.R. 111 would provide that the levy of tolls will be subject, inter alia, to Article III of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Since the so-called "Long Reservation" (actually Understanding (2) to the resolution

of ratification of that treaty) provides a construction of paragraph 1(c) of Article III, it is considered that reference to the article is, as a legal matter, a reference to the article as construed in the Understanding.

Question 3: In hearings in late 1977, the Subcommittee addressed various questions to the Department of Commerce, and responses were provided for the record. Please update any of the information provided for the record of the hearings.

Answer: Attached is a copy of the July 25, 1977 responses of Howard F. Casey (at that time Deputy Assistant Secretary of Commerce for Maritime Affairs), updated as you have requested.

Question 4: What is the estimated impact on U.S. merchant fleet traffic and U.S. traffic in international trade of the alternative provisions on claims contained in chapter 7 of H.R. 111 and chapter 3 of Title II of H.R. 1716?

What impact will the limitation of authorization of \$60,000 have on the U.S. merchant fleet or canal traffic in general?

Answer: The alternate provisions are essentially the same in substance, and consistent with existing law. With respect to vessel damage occurring within the locks, the burden of proof is on the Commission, to show the absence of negligence of any responsible employee in H.R. 1716, and in H.R. 111 by showing that the proximate cause or contributing cause of the injury was the negligence of the vessel, master, crew, or passengers. For damage occurring outside the locks, the burden of proof would be on the claimant to establish negligence. Since neither provision affects any substantive change to existing law, we would anticipate no impact.

This provision in H.R. 111 appears to have no rational basis, given the high cost of repairing damage sustained by most vessels even in minor mishaps, irrespective of the vessel's cost or special features. This limitation on the authority of the Commission to settle claims arising from vessel damage occurring outside the locks, without submission of a report to Congress, together with the absence of a provision allowing the initiation of a court action, might be expected to cause a slight increase in the cost of hull insurance. However, the impact on the U.S. merchant fleet or Canal traffic in general would be negligible.

Question 5: Are the provisions of H.R. 111 and H.R. 1716 for the continuation of various court functions acceptable to the maritime interests of the U.S. insofar as they allow a settlement of pending issues and cases in which maritime parties may be involved?

Answer: Under Article XI of the Treaty, as implemented by section 402 of H.R. 1716 and section 1511 of H.R. 111, United States courts in the former Canal Zone retain jurisdiction over civil cases, including admiralty cases, already instituted and pending prior to the effective date of the Treaty. While this should be acceptable to U.S. maritime interests, consideration might be given to allowing the filing of such actions in the district court for the Eastern district of Louisiana. Venue lies there under sections 260(g) of H.R. 1716 and section 296 of H.R. 111 (only for "Injuries in locks of Canal"). This forum should be more convenient for U.S. maritime interests and has recognized expertise in admiralty cases. As to settlement under the new regime, Article IX of the Treaty makes Panamanian law generally applicable in the areas made available for the use of the United States. Therefore, the district court for the Eastern district of Louisiana would apply Panamanian law in deciding Canal injury suits initiated after the effective date of the Treaty.

Question 6: How will the balance of payments accounting for the revenues of the Panama Canal Commission differ under H.R. 111 and H.R. 1716?

Answer: We see no essential difference. We would defer to the Department of Treasury on technical points in accounting procedures to be followed. As explained in my statement, there would be a difference with respect to tolls collected from State school training vessels (and other vessels of the U.S.), but this effect, we believe, would be negligible.

1. Economic Value of the Canal to the U.S. in Terms of Exports and Imports

Figure 1 summarizes recent and forecast U.S. imports and exports through the Canal as estimated from the Maritime Administration's continuing analysis of U.S. trade data. The historical portions of the graphs show imports totaling about 27 million long tons in the 1975-1976 time period with exports totaling about 54 million long tons in the same period. The forecast portions of the graphs show that by the year 2000 total imports will have doubled and total exports will be at $2\frac{1}{2}$ times today's level.

The exact numbers in the forecast may be challenged, but the point to be made here is that Marad expects U.S. trade on the routes associated with the Canal to rise substantially over the remainder of the century. Accordingly, even if some of the new cargo flow cannot be handled by it, the Canal should see increased traffic in future years and increase in value to its users.

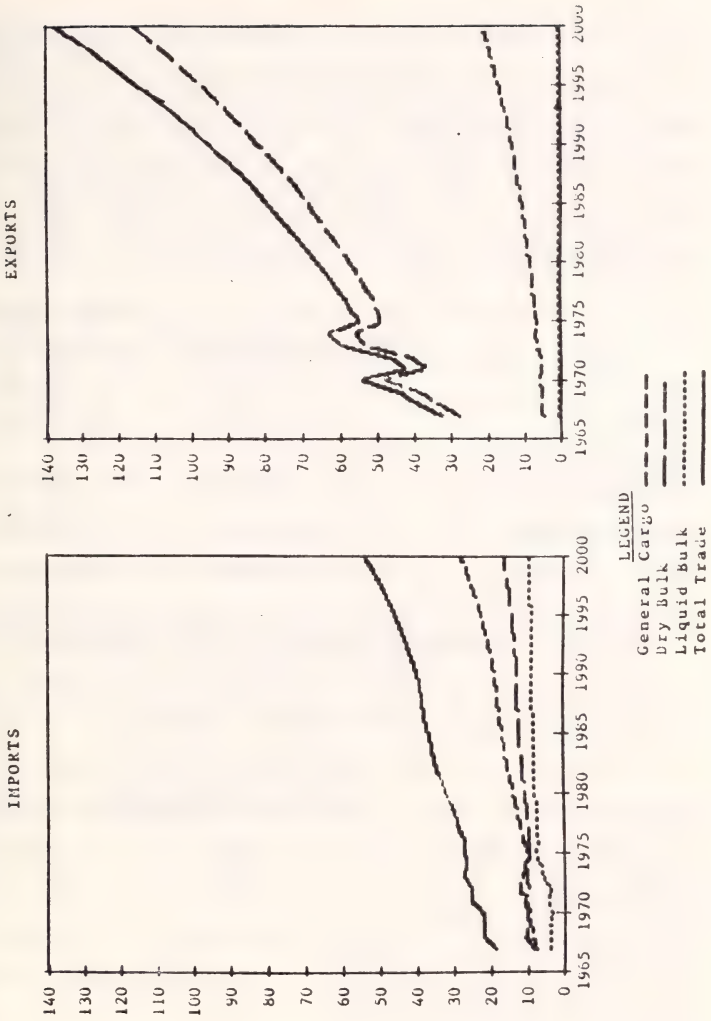
The Panama Canal Company's own 1977 Annual Report shows that 67.5 percent of the 122,979,000 long tons of principal commodities that transited the Canal during FY 1977 were U.S. exports or imports or part of the U.S. domestic intercoastal trade.^{1/} The following compares U.S. Canal trade with total U.S. waterborne trade for FY 1976:^{2/}

^{1/} Panama Canal Company and Canal Zone Government Annual Report Fiscal Year Ended June 30, 1977, Table 13, pp. 64-69, Table 14, pp. 76-83.

^{2/} Marad figures for years 1975-1976 as indicated in Figure 1 differ from corresponding Canal Company figures in two respects: (1) they are calendar year figures; and (2) they are derived from total trade route data that include non-Canal traffic.

U.S. PANAMA CANAL TRADE
FORECAST SUMMARY

(Millions of Long Tons)



2

The commodities that move through the Canal tend to make up high density, low value cargo. They are essential to the functioning of an industrial society. They include major grain and other food shipments to the world. Disruption of this cargo flow could have adverse effects on the U.S. and its trading partners.

	<u>Volume in Long Tons</u> a/	<u>Canal Volume Long Tons</u>	<u>Percent by Canal</u>
Imports	587,622,000	27,108,561	4.6
Exports	247,429,000	50,626,445	20.4
Total Waterborne Foreign	8,350,051,000	77,735,005	9.3
Total Coastwise	221,503,000	5,298,705	2.4
Total Oceangoing	1,056,554,000	83,033,711	7.9

a/ Approximate 1977 figure from Department of the Army, Corps of Engineers, Waterborne Commerce of the United States, Calendar Year 19 , Part 5, National Summaries, p. 6.

In terms of types of cargo, the economic value of the Canal is perhaps indicated by the following summary:^{3/}

<u>Commodity Group</u>	<u>Approximate Total Volume Through Canal, Millions of Long Tons</u>	<u>Percent of Total Cargo</u>
Petroleum & Products	22	18.5
Grains	23	19.0
Coal & Coke	13	10.5
Mfrs. of Iron, Steel	9	7.1
Ores & Metals	9	8.1
Nitrates, Phosphates & Potash	7	5.8
Misc. Agricultural Commodities	6	4.9
Lumber & Products	7	5.6
Canned & Refrigerated Foods	4	3.4
Chemicals, Petrochemicals	3	2.2
Machinery & Equipment	2	1.6
Misc. Minerals	3	2.2
All Other	13	11.1

^{3/} Panama Canal Company Annual Report, 1977, p. 10.

2. Economic Value of the Canal to the U.S. in Terms of Gross National Product

Numerous attempts have been made over the years to estimate the economic value of the Canal. In a study by International Research Associates completed in December 1973, it was suggested that the annual net economic value of the Canal "can be viewed as the difference between the resource cost of operating the Canal and the resource cost of providing equivalent services in the most economical alternative method." Their projection for 1980 was \$117 million, a small fraction of the current \$2 trillion Gross National Product of the United States. However, unless one is analyzing a large segment of the economy, such as manufacturing, retail trade, etc., the Gross National Product is not the best measure for evaluation.

Perhaps a more appropriate measure of the economic impact of the Canal can be shown by comparison with U.S. international trade figures. For FY 1977, 63.2% of the Canal's total commercial cargo tonnage (77.7 million long tons) had either a U.S. origin or destination in foreign trade. This represents about 9.3% of our total waterborne foreign trade by weight. Assuming an average value of about \$370 per ton, this implies a total value of U.S. origin and destination cargo transiting the Canal of about \$29 billion.

In addition, approximately 4% of Canal commercial cargo tonnage was in intercoastal U.S. domestic trade in FY 1977. This was approximately 5.3 million long tons with a value of approximately \$2 billion. This was about 2% of domestic ocean trades.

3. Alternative modes of Transportation and the Consequences of their Use to U.S. Consumers and Producers

The availability of alternative modes of transportation for cargoes transiting the canal is highly dependent upon the nature of cargoes. It is true that many break-bulk commodities can utilize railroad and truck transport (the landbridge system) to move between the two oceans. Although required rolling stock can be deployed in a relatively short period of time, there would likely be a substantial shortfall of rail and truck capabilities to carry all break-bulk traffic now transiting the canal in the short-run. Furthermore, the scheduling problems surrounding a new distribution system would be significant. There are fewer alternatives to the transfer of bulk commodities. Petroleum transport, for example, is limited by the present short availability of operational pipelines. Slurrying systems for ores and coal are still under development.

4. Past and Future Economic Benefits of the Canal to the U.S. and Other Countries

Existing trade data give a good indication of the role of the Canal in the U.S. economy; however, there are several additional factors which should be acknowledged in evaluating the contributions which the Canal makes. The movement of both commercial and military cargo between the U.S. East Coast and West Coast via the Canal affords savings in intercoastal shipping costs.

The benefits accruing to the United States through the remainder of this century will continue to be substantial. Even though U.S. and world economies are expected to continue to recover and grow, the Canal capacity is expected to remain adequate at least through the year 2000. The growing traffic will include both Alaskan North Slope and Indonesian crude oil. Availability of the Canal will enhance the economic incentives for development of oil sources yet to be proved.

Reliance on the Canal by other countries is substantial and exceeds that of the U.S. in many cases. Origin-destination data contained in the Panama Canal Company's Annual Reports show this dependence by country. Generally, most Central American and West Coast South American countries rely heavily on the Canal, often shipping 30% or more of their trade through the Canal.

5. Extent of U.S. Investment in the Canal; Prospects for
Return on that Investment

The total U.S. investment in the Panama Canal Company totals over \$500 million. The current interest-bearing portion of this total is \$319 million. The interest paid in FY 1977 was \$18.2 million. The current charter under which the Panama Canal Company operates does not allow for profit motivation, but instead cites a breakeven operation as a goal. This was achieved in FY 1977.

The benefits of this arrangement accrue to the various national users through the sellers, buyers and shipping lines. It is estimated tht the United States benefits to the extent of more than one third of the total of these savings, with Japan and Canada sharing 13 and 5 percent, respectively.

6. Economic Costs to the U.S. for Operating, Defending and Governing the Canal and Canal Zone

The total economic cost to all users of operating the Canal in FY 1976 was \$258,719,426. Included in this amount is \$22,649,145 attributable to the net cost of operating the Canal Zone Government. An estimate of the cost of defending the Canal was given by the Department of Defense in September 1974:

<u>Military Dept.</u>	<u>1972</u>	Fiscal Year (Thousands of Dollars)	
		<u>1973</u>	<u>1974</u>
Army	107,428	120,893	123,014
Navy <u>a/</u>	23,912	16,972	16,684
Air Force	<u>35,436</u>	<u>36,546</u>	<u>36,740</u>
Total	<u>166,776</u>	<u>174,411</u>	<u>176,338</u>
Man Years of Military Strength	10,533	10,321	10,414

a/ Includes Marines

7. The Canal's Economic Life; Costs and Benefits of Modernization to the U.S.

The Maritime Administration believes that as long as the Canal is able to make its toll structure attractive to Canal users, its economic life will be assured. The Panama Canal Company has performed its maintenance functions in a laudatory fashion, and, if it continues to do so, the Canal should provide efficient service through the remainder of the century without substantial capital improvements. The Canal, in its present state, permits transit of laden or in-ballast vessels drawing up to 39.6 feet of water depending upon prevalent rainfall conditions. Other physical limitations for vessels transiting the Canal are 950 feet maximum length and 106 feet maximum beam (width). While it is true that 7 percent of the world's merchant fleet cannot transit the Canal due to size limitations, it should be pointed out that virtually all of this ineligible tonnage was designed for trades which would not include Canal transit. Only 4 percent of the U.S. merchant fleet is unable to transit the Canal. Accordingly, the reasons economic obsolescence of the Canal is not an imminent prospect. It is generally believed that the currently planned maintenance schedule (which includes provisions for the deepening of the channel to increase the water supply, and the straightening of some curves) will be more than sufficient to assure continued economic life through the remainder of this century.

8. Canal Revenue and Future Economic Viability of the Canal;
Prospects for Toll Increases and Subsidies

The 1977 income statement of the Panama Canal Company shows a break-even situation.

Concerning prospects for additional toll hikes in the years to come, the trend evidenced by fiscal year 1978's operations demonstrates that further increases, except for those imposed by the new treaties, will not be necessary if world trade continues to improve. Continuing inflationary pressures may alter this outlook, however.

The probability of taxpayer subsidy for Canal operations appears slight in view of world trade prospects and the proposed operation of the new Panama Canal Commission.

Petroleum Shipments Over U.S. Related Trade Routes a/
(thousands of long tons)

	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>
East Coast U.S. to West Coast U.S.					
East Coast U.S. to West Coast Canada	1,454	1,263	874	1,098	420
East Coast U.S. to West Coast Central America	-	24	-	15	-
East Coast U.S. to West Coast South America	14	11	11	49	92
East Coast U.S. to Balboa, Canal Zone	53	41	67	86	91
East Coast U.S. to Hawaii	65	1	1	3	68
East Coast U.S. to Oceania	29	26	-	-	-
East Coast U.S. to Asia	88	74	71	58	74
East Coast U.S. to West Coast U.S.	246	277	320	492	547
East Coast Canada to West Coast U.S.	-	-	30	52	-
East Coast Central America to West Coast U.S.	14	25	26	32	31
East Coast Central America to Hawaii	630	-	-	35	39
East Coast South America to West Coast U.S.	28	1,398	2,677	4,094	2,032
East Coast South America to Hawaii	2,110	65	122	61	31
West Indies to West Coast U.S.	239	1,595	1,968	1,791	1,293
West Indies to Hawaii	14	288	227	87	69
Europe to West Coast U.S.	76	207	173	396	93
Africa to West Coast U.S.	-	100	74	100	-
Africa to Hawaii	-	110	88	144	-
Asia (Middle East) to West Coast U.S.	-	43	-	-	-
West Coast U.S. to East Coast U.S.	1,473	764	790	256	195
West Coast U.S. to East Coast South America	3	-	27	2	66
West Coast U.S. to Cristobal, Canal Zone	-	17	27	-	-
West Coast U.S. to West Indies	-	-	31	19	101
West Coast U.S. to Europe	1,362	1,622	1,884	1,774	2,197
West Coast U.S. to Africa	18	37	54	94	1
West Coast Canada to East Coast U.S.	29	23	358	1,475	-
West Coast South America to East Coast U.S.	1,031	1,111	188	1,344	1,704
Oceania to East Coast U.S.	146	-	9	14	19
Asia to East Coast U.S.	66	119	140	190	92
Totals	9,214	9,241	10,237	13,761	9,255

a/ Source: Panama Canal Company Annual Report for 1977 and 1976, Table 17.

9. Implications of Canal Usage for U.S. Energy Demands;
Significance of U.S. Energy Imports and Exports Through
the Canal

The Maritime Administration anticipates increased usage of the Canal to meet U.S. energy demands as it does to meet other demands for transport of commodities. Our forecasts of U.S. imports and exports through the Canal show an overall steady growth above present levels in Canal transport of energy-related commodities out to the end of the century. It is expected, for example, that Indonesian crude as well as other oils, some yet to be discovered, will transit the Canal during this time.

An indication of the significance of the U.S. energy imports and exports which now transit the Canal is given in the attached table on petroleum shipments over U.S. Canal-related trade routes. Present levels of annual petroleum shipments through the Canal account for three to four days of U.S. total petroleum demand. Thus, the level of petroleum transits alone is significant in meeting U.S. energy requirements.

10. Present and Future Value of the Canal to Developing Countries; Effect on U.S. Relations with those Countries

In 1974, International Research Associates, a private consulting firm under contract to the Panama Canal Company completed a seven volume study of the effects of toll rate increases on the U.S. economy, Oceania, Europe, South America, the Far East, Canada and the Caribbean Region, and Central America, Mexico and Panama. One of the conclusions of the study was that, in general, developing nations rely much more heavily upon trade for their economic life than do the industrially advanced nations.^{4/} In addition, it is a fact that many of the nations in the areas of the world mentioned above use the Canal extensively in developing their trade. Generally, most Central American and West Coast South American countries rely heavily on the Canal.

^{4/} Among the highly developed nations, a notable exception to this generalization is Japan.

11. Elements such as Time Savings, Distance Savings, Safety, Port Proximity, etc., which make Canal Usage Attractive to the U.S. Merchant Fleet

Each of the elements listed above makes Canal usage attractive to the merchant fleets of both the U.S. and the rest of the world. The table below gives examples of the savings in terms of both time and distance for vessels traveling on three specific trade routes. Fuel savings are generally proportional to the time and to the distance saved.

<u>Trade</u>	<u>Nautical Distance</u>			<u>Steaming Days @ 16 kt.</u>		
	<u>Via Canal</u>	<u>Via Cape Horn</u>	<u>% Savings</u>	<u>Via Canal</u>	<u>Via Cape Horn</u>	<u>% Savings</u>
El Segundo to U.S. Gulf	4,495	13,540	67	11.7	35.3	67
Valdez to U.S. Gulf	6,806	15,843	57	17.7	41.3	57
Indonesia to U.S. Gulf (via Panama Canal)	12,444	17,183	28	32.4	44.8	28
Indonesia to U.S. Gulf (via Suez Canal)	11,702	17,183	32	30.47	44.8	32

Safety is also an advantage offered by the use of the Canal. To the extent that merchant ships can avoid the hazardous waters of Cape Horn, operators can lessen the risk of collisions and groundings and reduce their insurance premiums.

12. Factors that would Destroy the Present Cost-effectiveness of Use of the Canal by the U.S. Merchant Fleet

The Panama Canal is currently operating well below capacity with between 12,000 and 13,000 transits per year by commercial oceangoing vessels. The Maritime Administration estimates that North Slope oil will impose, at its maximum, only about 700 additional transits per year by 1982. Moreover, the Panama Canal Company does not expect 100% capacity utilization of its present facilities before the turn of the century. In fact, according to one of its more conservative estimates, the number of transits may reach no more than about 17,000 in the year 2000.

Another issue of grave concern to this agency and to all U.S. fleet operators is that of the future toll structure of the Canal. A May 1977 article in Distribution Worldwide noted that the competition which much of the industry faces from the landbridge systems is substantial. Fifty-one percent of all general cargoes entering and existing through U.S. Pacific ports now move by landbridge systems.

13. Alternatives to Use of the Canal by the U.S. Merchant Fleet

Discussion under topics 1, 3, and 11 addressed the trade flows through the Canal, its economic advantages and the alternatives to use of the Canal. The U.S. merchant fleet has developed a heavy reliance on the use of the waterway. Ninety-six percent of all U.S.-flag merchant vessels are capable of transiting the Canal, although not all of these vessels normally transit it. In FY 1977 alone, 1,021 Canal transits were made by U.S.-flag vessels.

If the merchant fleet were forced to use alternative routes, a combination of several basic options could be adopted. Ocean-going commerce could be forced to give increasing shares of its cargo to various forms of landbridge systems. At the present time, more landbridge facilities exist for break-bulk commodities than for bulk cargoes. A second option would be to steam around Cape Horn with substantial increases in time and operating cost and drastic reduction of the laydown capabilities of vessel owners. To the extent that U.S.-flag vessels-- especially those which have been using the Panama Canal regularly-- are forced to reduce their delivery capabilities, revenues needed to cover capital costs would be in short supply. Moreover, where oversized foreign-flag ships are free to compete with U.S.-flag vessels, many U.S.-flag operators would face financial disaster since their operations are not organized for non-Canal shipping.

14. Potential of other Modes of Transportation to Absorb the Traffic that Presently Transits and is Projected to Transit the Canal

As indicated under topic 3, the Maritime Administration feels that this potential, at present, is very limited.

Mr. HUBBARD. Thank you, Mr. Nemirow. I am going to yield as the chairman to legal counsel for the full Merchant Marine and Fisheries Committee, Mr. Merrill Whitman, who will ask a couple of questions, please.

Mr. WHITMAN. In the comment on the possible application of the 1-year statute of limitations to the Federal Tort Claims Act, I think the implication is that there is no provision for any limitation in H.R. 111. I would like to refer to section 296 of that bill, which provides that, "such actions"—which are these actions on vessel accident claims—"shall proceed and be heard by the court without a jury according to the principles of law and rules of practice pertaining generally in like cases between private parties and other agencies of the United States Government."

My question is, would not that include the applicable statute of limitations in suits by private parties against the U.S. Government.

Mr. NEMIROW. Having been trained in the law, I had a similar problem as I was reviewing the testimony. It is my understanding from some of our lawyers who have researched this point that a question can be raised under H.R. 111 as to whether a 6-year statute of limitation, under the rules of the U.S. District Court in the Eastern District of Louisiana, will apply. And it was our view that the treatment in H.R. 1716 would provide more expeditious handling. I did not mean to infer that there would be no statute of limitations that might apply in those circumstances.

Mr. WHITMAN. Is there a 6-year statute of limitations in that—

Mr. NEMIROW. I do not know that of my own research.

Mr. WHITMAN [continuing]. In that circuit that would apply to suits, tort claims against the United States?

Mr. NEMIROW. It is unclear, it seems to me, whether there is a—if there is a tort claim against the Panama Canal Commission, as to whether that would be treated as a tort claim against the United States under the Federal Tort Claims Act.

Mr. WHITMAN. Well, I think it is quite clear that it would not be, because it is outside the United States. If you have some further material on that to indicate the necessity for some further statute of limitations, I think the committee would appreciate receiving it.

I have one other question on lack of knowledge of an inquiry as it would affect the handling of claims. Your comment suggests that we should specifically incorporate in the law a provision that lack of knowledge of injury should not waive the requirement that the claim be asserted while the vessel is in the Canal Zone and that timely action be taken to pursue it. This has been the subject of extensive litigation; it has gone to the court of appeals about three times, and the court of appeals has on every occasion taken a very strong position that that kind of restriction would be inappropriate. I do not question that the Congress could write it into the law, if they chose to do so.

But in the light of that series of court of appeal decisions, do you think it would be desirable to so limit the rights of the vessel owner?

Mr. NEMIROW. I would think, for the purposes of clarity, Congress has the opportunity to eliminate the confusion that exists in a series of cases at the court of appeals level, and you can either be specific about lack of knowledge or leave it before the courts. It

would seem to me that it would be in everybody's interests to specify now whether lack of knowledge will or will not be a defense.

Mr. WHITMAN. Thank you.

Mr. HUBBARD. Congressman Bauman?

Mr. BAUMAN. Mr. Nemirow, I wanted to ask you about the extent of the involvement of your Department in the treaty itself and in the drafting of this legislation. Was your Department consulted on an extensive basis, or occasionally, or almost not at all? Be honest, now.

Mr. NEMIROW. I have a problem with definition. I do not know what "occasionally"—I think it is unfair to say that we were not consulted at all. I think it is fair to say that we were consulted occasionally, and as our interests appeared, that we felt fairly satisfied that we were consulted on the commercial merchant marine-type issues that are of concern, particularly, to the Maritime Administration.

Mr. BAUMAN. The key to this entire discussion last year, as I saw it, was the adequacy of the tolls to cover the terms of the treaty and the costs that they produce and, at the same time, allow the canal to continue to operate and be maintained. I never saw a definitive study throughout the entire debate. The one that would probably have been the most accurate is the one that Governor Parfitt and others did in preparation for their testimony, because they, of course, have the firsthand knowledge, keeping account of the transits. They projected a 40-percent increase in tolls to cover the projected costs of the treaty.

Now, the State Department took the lower figure, but admitted at least 30 percent. Professor Brandis, I believe it was, of Stanford, presented a study toward the end of the Senate consideration that seemed to indicate it was even going beyond that, but he qualified it in so many ways that it could not be definitive.

Now, has the Commerce Department done anything since to try and produce a definitive study of the tolls that will be required, because that certainly is central to much of what we are writing here in legislation, it seems to me.

Mr. NEMIROW. Again, there is this word "definitive." We have looked into this matter, and in our response to the questions, we do assign some numbers as to increases in tolls and the sensitivity of tolls increases to diversions of traffic and the impact on ships that would be transiting the canal. As I say, I hope that will be up this afternoon.

I would only make one additional point. It is a very difficult analysis to make because of the assumptions that must go into doing the analysis. For example, if you were to take H.R. 111 and include in the base, for the calculation of rates of tolls, the interest, capital costs and early retirement payments that would have to be made, that would increase substantially the level of tolls required in order to have a profitable operation. On the other hand, the administration bill, 1716, basically forgives those costs; it does not include them in the rate base and would forgive the interest payment and the capital investment, and that would tend to keep tolls down. The range can be very substantial, in terms of the range of

the increase, depending on whether you include those costs or do not include those costs.

Mr. BAUMAN. Well, that liberal forgiveness is not consistent with the repeated assurances that it would not cost \$1 additional to the taxpayer.

So, assuming these costs are counted as part of the overall operation and directed toward toll determination, what is your high figure that your study has produced—to increase 40 percent or more?

Mr. NEMIROW. I think the highest figure that I have seen, which apparently is the one you are looking for, is either 44 or 47 percent. I would supply that to you specifically, if I could. I believe I saw that number in the various materials that I reviewed.

Mr. BAUMAN. A 44- to 47-percent increase, if I am not mistaken, would be in the range that would discourage transits, reduce overall income and, in effect, cause even higher tolls to make up the deficit, would it not?

Mr. NEMIROW. The answer is not necessarily, because it depends upon certain traffic patterns, required transiting of the Panama Canal, and the alternatives are few for those particular types of traffic. Whether you get diversions would have to be analyzed, and how sensitive some of the transits are to increases in tolls.

You can increase tolls, I think we can all agree, a certain extent and have no impact on transits. There are impacts in other sectors, but there are no impacts on transits; you can pass those costs along. But you do get to a point where the increase in tolls can be so significant where traffic patterns would change and rather than going eastbound, you go westbound to deliver your cargo.

With that 47 percent, I am certain that certain types of traffic would not transit the canal.

Mr. BAUMAN. I am sure you have not had time to do a study, but is your Department doing any consideration of the increased role that the canal might have to play in view of what has happened in Iran and may now happen in Saudia Arabia and other Middle East countries? Obviously, we have a glut on the west coast of Alaskan oil which cannot be easily transported, and I have seen the lightning going on down there.

Have you begun a study on this? It seems to me you ought to.

Mr. NEMIROW. We do have some preliminary data. I cannot say that we have completed a study. The analysis as to the impact of tolls and the impact on transits and the general increases does include certain assumptions, as I said earlier, relating to how much is going to be required, how many Alaskan transits there are going to be, will there be an impact on the Valdez oil moving around to the gulf. All of those issues have been reviewed by us and are in our analysis.

Mr. BAUMAN. Well, I would suggest that you can give this committee any sort of projections you can make updated from the debate in the Senate, when many of the projections being handed out were for self-serving reasons. It might weigh heavily with this committee as to whether they will include the interest payment, whether they will include other things. It would be very helpful if you could provide us with a detailed analysis.

Mr. NEMIROW. We have taken all of the projections that we made at that time and all of the testimony given by us at that time and updated it with today's costs and today's traffic patterns, and we will be submitting that, I hope, this afternoon.

[The material was supplied at a previous point.]

Mr. BAUMAN. Have you given any consideration to additional provisions, such as the east coast ports and the gulf ports have suggested about a limitation on tolls? Has the Commerce Department looked at that in any way? I know that there is quite a bit of ruckus in that part of the community right now, the business community.

Mr. NEMIROW. Not in any official way, to my knowledge.

Mr. BAUMAN. Your Department does not have any position on the suggestion that there should be an automatic limiting device written into law on toll increases, beyond the Commission's judgment?

Mr. NEMIROW. Correct.

Mr. HUBBARD. Mr. Merrill Whitman?

Mr. WHITMAN. I have one more question that I overlooked, if you will be kind enough to answer it.

In your testimony, you suggested that the limitation of \$60,000 on the amount of claims that could be settled by the Commission was too low, and it may be. My question is, could you provide to the committee—I would not ask you to do it at the moment, unless you have worked it up before coming up here—what figure would be appropriate as a limitation.

Mr. NEMIROW. I would like to commend to your consideration the administration's position in 1716 that the Commission be given the authority to settle claims without a limitation. I think we can argue 60, 150, 250,000; I am not sure that that would be productive. But I will try to communicate with you directly as to some of our trends, as far as the costs that we have seen and the exposure that we have seen on various types of incidents and how much they have been, and see if I can demonstrate to you that 60,000 is too low in this environment.

Mr. WHITMAN. It may very well be. Of course, the Federal Tort Claims Act has had a limitation of \$1,000 for all claims subject to the act. I would appreciate any kind of material you could give us, particularly related to vessel accident claims in the Panama Canal.

Mr. NEMIROW. I think you would find that compared to the types of actions that are heard under the Federal Tort Claims Act, a \$1,000 limitation may make sense, but if you look at the incidents and casualties that may occur outside the locks, because that is the provision that this applies to, the \$60,000 limit on maritime incidents is insufficient.

Mr. WHITMAN. Thank you very much.

Mr. HUBBARD. Thank you, Mr. Samuel B. Nemirow, Deputy Assistant Secretary of Commerce for Maritime Affairs.

Mr. NEMIROW. Thank you, Mr. Chairman.

Mr. HUBBARD. We are ready for our next witness. Will he please come forward. He is Mr. Stephen A. Shefler, Deputy Assistant Secretary for Policy and International Affairs of the U.S. Department of Transportation.

Mr. Shefler was appointed to this position in June 1977, as a part of President Carter's administration. He previously had worked with transportation, housing, banking, taxation, and environmental matters.

He is joined by Edward W. Scott, Assistant Secretary for Administration of the Department of Transportation.

Thank you, gentlemen, for joining us. We will hear now from Steve Shefler.

STATEMENT OF STEPHEN A. SHEFLER, DEPUTY ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY JOHN NOLIN, DEPARTMENT OF TRANSPORTATION, AND COMMANDER HUGH WILLIAMS, U.S. COAST GUARD

Mr. SHEFLER. Mr. Chairman, thank you for the opportunity to testify today.

Mr. Scott, our Assistant Secretary for Administration, was unable to make it. John Nolin, of the Office of Management Systems in Mr. Scott's is with me to my right, and to my left is Comdr. Hugh Williams of the U.S. Coast Guard.

What I would like to do is submit my full testimony for the record and very briefly summarize it for the purposes of saving time.

Mr. HUBBARD. I believe I can speak for Mr. Bauman, we both would agree to that.

[The following was received for the record:]

STATEMENT OF STEPHEN A. SHEFLER, DEPUTY ASSISTANT SECRETARY FOR POLICY
AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and Members of the Committee:

I am pleased to have the opportunity to discuss with you the views of the Department of Transportation on legislation to implement the provisions of the Panama Canal Treaty of 1977. As President Carter has stated, the legislation to provide for efficient conversion to the new system of Canal operation described in the Treaty should be adopted by May 31, 1979, in order for the new system to be instituted expeditiously and effectively so that it can be in place when the Treaty enters into effect on October 1, 1979.

Since it was first opened to traffic, the Panama Canal has been an important transportation facility, and it will continue to play a major role in meeting U. S. and world transportation needs. Viewed in the short term, the Canal is vital for, among other things, the transport of oil from the Alaskan North Slope to the East Coast and Gulf refineries. And the Canal will continue to provide a necessary supplement to our domestic transportation system, even as we complete development of adequate coast-to-coast pipeline capacity, deepwater ports and land minibridge transportation refinements.

The committee has before it for consideration several bills which differ significantly as to how the Panama Canal Treaty will be implemented. H.R. 111 has been introduced by Chairman Murphy. The Administration has also proposed a bill to implement the Panama Canal Treaty, H.R. 1716, which Chairman Murphy has also kindly introduced. The Department of Transportation supports the Administration's bill, which we believe provides a comprehensive but sufficiently flexible system for implementation of the Treaty. Moreover, a number of the provisions of H.R. 111 are of direct concern to us.

Without going into great detail, I would like to cite a few provisions in H.R. 111 that are of particular concern to DOT:

- H.R. 111 would require that the Panama Canal Commission be an appropriated fund agency, while the Administration bill would establish the Commission as a government corporation. The Department supports the concept of a government corporation as provided for in H.R. 1716. The treaty envisions the Canal as a selfsupporting enterprise in which the management will be gradually shifted to Panama in preparation for final cession to Panama in the year 2000. The past history of the Panama Canal Company has shown that adequate control of such a corporation is achievable, when subject to general policy direction coordinated with interested government departments. Moreover, to establish the Commission as an appropriated fund agency would make the transition from the Panama Canal Company to the Panama Canal Commission more difficult as it would require a change in the structure of the Canal management organization.

- The Administration's bill provides for what DOT considers a fair and reasonable fee for Canal use which is based upon operating costs, including depreciation on certain properties. H.R. 111 would add significant additional costs to Canal tolls by requiring the Panama Canal Commission to pay interest on the net direct investment of the United States. This additional cost could have an adverse impact on Canal traffic.

- H.R. 111 would require that the Department of Defense provide oversight to the Panama Canal Commission, whereas the Administration bill would provide the President with discretion as to where that responsibility should be lodged. While we understand the importance of defense concerns with respect to the Canal, we believe the flexibility provided by the Administration bill is preferable. Conditions change and the President should have the authority to respond to such changes when they occur.

- Under H.R. 111, the membership of the Board of the Panama Canal Commission is so specified as to exclude participation by Administration representatives other than the Department of Defense. The Department of Transportation supports the Administration proposal, which would permit representatives on the Board of more than one interested Federal agency. This would assure that overall U.S. policies could be effectively achieved. It would also permit DOT to be one of the agencies represented on the Board.

Canal matters are important to our overall national transportation policy. If the capacity and efficiency of the Panama Canal are not

maintained, there will have to be additional railroad, highway, and pipeline capacity provided for trade which now uses the Canal. Similarly, as the volume of trade increases in the future and new trade opportunities develop (e.g., the People's Republic of China), many of these trades could be most economically handled through an efficiently operated Panama Canal. Our Midwestern exporters of grain have a vital interest in the maintenance of the Canal as a low cost water route. On the other hand, the handling of containers where speed and certainty of on-time delivery is very important has been moving to minilandbridge service in both directions as an alternative to service through the Canal.

The Panama Canal is a major transportation facility which presents many problems similar to those encountered in the operation of the Saint Lawrence Seaway and other transportation facilities. As the Executive Branch Agency responsible for the overall coordination of transportation policy, DOT should be included within the membership of the Canal Commission's Board. I urge you to consider the latitude in Board appointments provided by the Administration's bill so that DOT will not be legislatively excluded from membership.

The Department of Transportation would expect to be involved in the examination and evaluation of options for future development of the Panama Canal or whatever facilities succeed it. The issues involved must be reviewed both from the point of view of the needs of our domestic

users and as an aid to Panama in its longer range planning for the time after year 2000. This is a challenge that we at the Department of Transportation welcome. Regardless of the particular structure developed for interagency cooperation, DOT's inherent expertise in transportation management, including the correlary capabilities in transportation research, planning, operations and training should be available to the Canal management. In this way DOT can make a significant contribution toward efficient Canal development and operation both in the period to year 2000 and in planning for the period beyond 2000.

This concludes my prepared statement. I will be pleased to answer any questions you may have.

Mr. SHEFLER. I appreciate the opportunity to testify here today. The Department of Transportation supports the Administration's bill, H.R. 1716, which Chairman Murphy has kindly introduced.

The Department supports that bill because we believe it provides a comprehensive but sufficiently flexible system for the implementation of the treaty. There are three key points we would like to make.

First, we think the administration bill provides for what DOT considers a fair and reasonable fee for canal use, which is based upon operating cost, including depreciation on certain properties.

Second, H.R. 111 would require the Department of Defense provide oversight to the Panama Canal Commission, whereas, the administration bill would provide the President with discretion as to where that responsibility should be lodged. While we understand the importance of defense concerns with respect to the canal, we believe the flexibility provided in the administration bill is preferable.

Third, and finally, under the H.R. 111 proposal, the membership of the Board of the canal is so specified as to exclude participation by administration representatives other than those of the Defense Department. The Department of Transportation supports the administration proposal which would permit representatives on the Board of more than one interested Federal agency.

Those are the key points we have to make in regard to the two major bills which are being considered by this Committee, and I will be happy to answer any questions.

Mr. HUBBARD. Thank you very much, Mr. Shefler, for your good statement, for your brevity, and for your concise review of your prepared remarks which we will enter in the record.

I have no questions.

Mr. Bauman?

Mr. BAUMAN. I just want to say, Mr. Shefler, I didn't mean any offense about the DOT not being able to handle the Panama Canal, nor to my former colleague, Mr. Adams. I am sure he would rather have the Defense Department—

Mr. HUBBARD. Thank you, Congressman.

Does the legal counsel have any questions for Mr. Shefler?

Mr. WHITMAN. I have no questions.

Mr. HUBBARD. Mr. Shefler, again, thank you very much. You have made me a prophet. It is 1:15. I said that about 45 minutes ago we would conclude this hearing at this time. You made my prophecy hold up. We are at 1:15 and at the conclusion of this segment of hearings of the Subcommittee on the Panama Canal. We will now close and continue these hearings at 9 a.m., Monday, February 19.

Thank you very much, each of you.

[Whereupon, at 1:15 p.m. the subcommittee adjourned, to reconvene at 9 a.m., Monday, February 19, 1979.]

CANAL OPERATIONS UNDER 1977 TREATY

FRIDAY, FEBRUARY 23, 1979

HOUSE OF REPRESENTATIVES,
PANAMA CANAL SUBCOMMITTEE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Balboa Training Center, Panama Canal Zone.

The subcommittee met, pursuant to notice, at 10 a.m., Balboa Training Center, Balboa, Panama Canal Zone, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Present: Representatives Murphy, Bonior, Wyatt, Lowry, Bauman, Lent, Carney, and Evans.

Mr. MURPHY. The committee will come to order.

On February 14 of this year this committee opened hearings in Washington on legislation to provide for the maintenance and operation of the Panama Canal under the two treaties with Panama signed on September 7, 1977.

At that hearing, I traced in some detail my early support for a just revision of our treaty relationship with Panama, the necessity for enactment of new legislation, and the evolution of the bill, H.R. 111, which I have introduced, based on the requirements for legislative action inherent in the treaties and consideration of the provisions incorporated in other bills for the same purpose, all of which are being considered by the committee.

The short title of my bill, H.R. 111, is the "Panama Canal Act of 1979." This title was consciously selected in all humility, because the purpose of the bill and the circumstances that make necessary its enactment bear a striking similarity to those applicable nearly 70 years ago when the Congress enacted the Panama Canal Act of 1912 that has formed the underlying basis for operation of the canal since that date.

In the perspective of history it is fitting that in the consideration of a new Panama Canal Act, the Isthmus of Panama again be the site of hearings by the committee having the responsibility to formulate and recommend such legislation for enactment by the Congress.

Some 68 years ago, the Honorable William C. Adamson of Georgia, the chairman of the Committee on Interstate and Foreign Commerce, the committee then having jurisdiction over Panama Canal matters, opened hearings here with the following statement:

The committee has come to the isthmus to inform itself concerning the progress that is being made on the construction of the canal, and to determine what the requirements are on the Canal Zone in order that proper legislation may be enacted * * *. We are about to realize the hope of the ages in the consummation, under providence, through the American brain and energy of the greatest achievement of all times, the joining of the two oceans through the Isthmus of Panama, for the benefit primarily of our Army and Navy and, secondarily, for the benefit of the

commerce of the world. We are impressed with the consciousness that this is perhaps the most important hearing that has been or will be held on the subject of the Panama Canal.

Although this statement, expressed in the rhetoric popular in another day, was made at hearings at the inception of the operation of the canal by the United States and while our hearings relate to the final years of that operation, the tenor of the statement and its underlying theme are still applicable.

Witnesses before the committee in 1911 included such names as George W. Goethals, David Gaillard, and William C. Gorgas, all illustrious figures in the construction and early history of the canal. But the committee then did not limit itself to testimony by the now famous architects of the enterprise.

It also listened to and considered the views of the people directly involved in the building and operation of the canal. The tradition established by those early heroes of the construction and operation of the canal has been maintained with singular success by the people who followed them in the undertaking, including those who now operate the canal with all its complicated infrastructure, who are appearing or are represented here today. We invite and solicit their views and recommendations.

There are two aspects of the legislation to which I want to invite particular attention before we hear from these witnesses. One of these considerations was stressed by Chairman Adamson in his statement at the 1911 hearing, from which I have quoted, namely that the canal was constructed for the defense of the United States and for the promotion and regulation of commerce.

Although the primacy of these objectives may have been somewhat obscured in recent years by the accounting terminology appropriate for incorporated business enterprises, the fact remains that the interests of the United States are governmental in nature and their description by Chairman Adamson at the 1911 hearings is accurate today.

Because of the nature of those interests and the circumstances under which the canal will operate for the next 20 years, the bill I have introduced provides for that operation by means of a Government agency in substantially the same form as that recommended by the Adamson committee and approved by the Congress in the Panama Canal Act of August 24, 1912.

The second point I want to make today is that legislation to provide for the future operation of the canal must provide for fair and considerate treatment for employees of the organization, all of whom will be affected in varying degrees by the change in functions and structure brought about by the treaty.

The treaty also provides, and I believe that the past legislative actions of this committee demonstrate its consistent support, for a policy insuring that kind of treatment for the employees who have maintained a high level of efficient performance with such remarkable consistency.

This applies to all employees without regard to race, creed, color or national origin, and the committee will welcome the views of all on the provisions of H.R. 111 dealing with this subject.

The future success of the Panama Canal enterprise depends upon the careful crafting of a number of legislative provisions. We

cannot write such provisions for the operation of the canal and the implementation of the treaty without hearing from those who are most directly affected, but well drafted legislation alone is not enough.

We also need the determination of United States and Panamanian citizens alike to make the next canal regime a successful one. We hope this visit and these hearings will help cement such determination.

So I face these hearings with the conviction that the implementation of the Canal Treaty can and must serve the interests of not only the United States and Panama but the world as well.

As all of you know, the time within which the Congress is required to act on this legislation is extremely limited, and I hope that we will be able to proceed as expeditiously as possible to obtain as much relevant information as we can from as many sources as possible.

At this point I would like to yield to the Honorable Robert Bauman, the ranking minority member of the subcommittee, from the great State of Maryland.

Mr. BAUMAN. Thank you, Mr. Chairman.

I think the chairman is correct in his historical allusions citing the names of Americans who in the past had much to do with the creation of this major work, the building and operation of what I consider to be a rather glorious chapter in our history. This canal has benefited the world, has benefited the United States and has benefited the people of Panama.

The question we have to face in these hearings, as I view it, is whether or not it will remain so, and I believe there are serious questions about whether that will be the case.

We are faced with the difficult situation of trying to fill out the flesh on the bare bones of a treaty that was written under great pressures, is full of loopholes, and in many ways remains to be written based on what the legislation will be that comes out of this subcommittee and out of the Congress.

I personally was opposed to the treaty. I remain opposed, and I think the majority of the American people, if they had a chance, would express their opposition to these treaties. But I am also realistic enough to know there is no possibility of changing the course of these events, but there is the possibility of fashioning the course of these events.

I believe the present treaties completely ignore the constitutional right of the House of Representatives under article IV to dispose of the properties of the United States, and in many ways they do represent a sellout of the interests of the United States.

I understand that one of my colleagues here earlier this week took umbrage at the reference to the U.S. Senate action on these treaties as being characterized as a sellout. There are a lot of Americans who share that viewpoint, and it gives me no great pleasure that the two Senators from Maryland provided the margin for this treaty.

These treaties, as I said, I believe are wide open; they are full of loopholes, and there are a great many things that have to be addressed, not only employees' rights, which are highly important for the operation of the canal, but the matter of setting the tolls,

the matter of defining the costs so we will know precisely what moneys will be available.

But I think the principal issue remains whether the operation and maintenance of this canal as a strategic and economic link for the United States will be permitted for the rest of this century, and I have grave doubts about that.

My own view is we have to fashion a law that will protect the United States' interest, first of all, that will give control over the operation of the canal, not just to the Commission that the treaties creates, but to the Congress of the United States as opposed to the executive branch. I support this because I have no great confidence in this or future administrations to carry out in a manner that will protect our interests if the treaties are any example of their view.

I think the law we write will have to place clearly on the statute books a definition of cost and how these canal tolls are to be determined.

I do not believe now, and could believe then, the statements of President Carter or Secretary Vance or Assistant Secretary Christopher or Ambassador Bunker or Ambassador Linowitz, all of whom at one point or another assured the American people these treaties would not cost the American taxpayers one additional dollar.

That is a joke and these hearings will bear that out.

The question we have to address squarely is whether or not we wish to continue in a corporate form or appropriated form under the control of Congress to protect the employees and most of all to act in a timely fashion because of the dates of the treaties.

In closing, may I say that the character of the Government of Panama is not outside the purview of the Congress of the United States in writing this law. There are a great many officials of the Government; I have talked with some of them at length when I was here a year ago who view the treaties as an economic bonanza for a government that has serious economic problems, and I need not describe them to you.

The truth of the matter is that if the U.S. Congress does not fashion a correct law instead of a bonanza, this could be a source of continuing discontent for the rest of the century. And I am not talking about disagreements about the relocation of locomotives. I am talking about the fundamental problems that are inherent to the way the treaty was written, whether or not, for instance, the present political freedoms that have been increased in the last few months as compared to 10 years of oppression will continue.

So I think we have our job cut out for us, Mr. Chairman, and I would also add, before we hear the Governor's testimony, a personal word of thanks to his staff, the Canal Company, and the Canal Zone Government.

They have set an example that is very hard to follow, and he has set a personal example that is very, very difficult to follow.

Thank you, Mr. Chairman.

Mr. MURPHY. Thank you, Mr. Bauman. [Applause.]

Mr. Bonior, are there other opening statements?

Mr. LENT. I have no opening statement.

Mr. EVANS. No, sir.

Mr. MURPHY. I would like to introduce the other Members of Congress who are here: Congressman Bonior from Michigan; Congressman Joe Wyatt of Texas; Congressman Lowry of Washington, and on my left my colleague from New York, Congressman Lent; Congressman Carney, also from New York, and the former Governor of the Virgin Islands and now the Delegate Governor, Melvin Evans. So we do have a very broad ranging geographical as well as experience-based committee that is here today.

At this point we are ready to hear testimony, and we welcome the Governor of the Canal Zone, Governor Howard Parfitt.

Governor?

STATEMENT OF HON. HAROLD R. PARFITT, GOVERNOR OF THE CANAL ZONE

Governor PARFITT. Thank you, Mr. Chairman and members of the committee and subcommittee.

I appreciate the opportunity to appear before you today and to testify concerning legislation which has been drafted to implement the Panama Canal Treaties of 1977 and related agreements.

My opening statement is rather lengthy, and if it pleases the subcommittee I would like to abbreviate the comments now and provide the full text for the record.

Mr. MURPHY. Without objection, the full text will be printed in the record.

[Governor Parfitt's statement follows:]

PRESENTATION BY H. R. PARFITT, GOVERNOR OF THE CANAL ZONE

INTRODUCTION

(1) Mr. Chairman and members of the Subcommittee, my name is Harold R. Parfitt, and I am Governor of the Canal Zone. I appreciate the opportunity to appear before you today and testify concerning legislation which has been drafted to implement the Panama Canal Treaties of 1977 and related agreements.

(2) As you know, the new treaty will enter into force on October 1, of this year. When it does, the Canal Zone, which has existed under United States jurisdiction since its creation in 1904, will be disestablished and the Republic of Panama will assume plenary jurisdiction over that area in accordance with the terms of the treaty. That document requires that, upon entry into force, the present Canal agencies—the Panama Canal Company and the Canal Zone Government—cease operations in what is now the Canal Zone; it also states that the United States will carry out its responsibilities to manage, operate and maintain the waterway until the end of the century by means of a new U.S. Government agency called the Panama Canal Commission.

(3) To date, two bills designed to establish this new agency and implement other non-self-executing provisions of the treaty documents have been presented to the Congress. The first of these H.R. 111, sponsored by the Chairman of the Merchant Marine and Fisheries Committee, was introduced on January 15. The administration, on January 31, submitted a draft bill introduced as H.R. 1716. They differ in many substantive respects. I would like to confine my remarks today to those points which I see as having the greatest potential impact on the efficient operation and financial viability of the Panama Canal.

EMPLOYEE PROVISIONS

(4) In my view, the most important portions of the two bills are those dealing with Canal employees. As you may appreciate, the last 18 months have been particularly trying for our workforce. Faced with considerable uncertainty concerning their futures throughout the period of negotiations and, later, during the Senate debates of the new treaties, employees of the canal agencies nevertheless continued to perform their jobs at their usual high level of efficiency. They are still doing so, even though they do not know what the statute implementing the treaty will ultimately hold in store for them after the legislative process has been completed.

You may be assured, however, that the workers in the Canal Zone are intimately familiar with the contents of the two bills dealing with employee rights and benefits, and that they will follow their progress closely.

(5) There do not appear to be any significant differences between the Administration's Bill and H.R. 111 in this area. While I will defer to the office of Personnel Management on the details of these provisions, I would like to begin my testimony today by reviewing some of the major employee provisions of the two bills because of their importance to our employees and, hence, to the continued, efficient functioning of the canal organization.

(6) To start with, under Article X of the treaty, the Commission is authorized to pay, over and above basic compensation, additional remuneration to certain categories of employees. Accordingly, the bills would authorize the head of U.S. Government agencies operating in Panama to pay overseas recruitment and retention differentials to (a) persons employed by the Company/Government or other U.S. Government agencies in the Canal Zone before October 1, 1979; (b) to those recruited after that date from outside of Panama; and (c) to medical doctors employed by the Department of Defense or the Commission. Both bills fix the ceiling on this differential at 25 percent of the rate of basic compensation paid for the same or similar work performed by U.S. Government employees in the United States.

(7) A differential (currently 15 percent) has been paid by the canal for many years and has provided one of the most effective incentives for recruitment and retention of a skilled workforce. Since the need for highly skilled employees not readily available in Panama will continue for the foreseeable future, we consider this provision to be an important one.

TERMS AND CONDITIONS OF EMPLOYMENT

(8) With the inevitably significant change which the loss of U.S. jurisdiction will bring, the bills recognize the importance of preserving, to the maximum extent possible, the present quality of life for Canal employees by placing in the law the treaty guarantee that the terms and conditions of employment with the Panama Canal Commission will in general be no less favorable to persons already employed by the Company/Government than those in effect prior to October 1, 1979. These provisions would extend that guarantee to those Company/Government employees who are transferred to other United States Government agencies in Panama as a result of the treaty. The 22 specific conditions of employment which would be protected are listed in the bills and include such things as wage rates, reinstatement and restoration rights, injury and death compensation benefits, transportation and repatriation benefits and leave and travel except as modified to provide equity with other employees in the agency to which the employee is transferred. The leave and travel provision has been construed by the Department of Defense to allow employees who are transferred to that agency to be converted to the leave and travel system generally applicable to the Federal service over a period of 3 years.

(9) For those U.S. citizen employees of the Company/Government who are either displaced as a result of the treaty or who decide that they do not want to continue their employment in Panama, the bills would require the Office of Personnel Management to develop and administer a government-wide program of placement assistance. This provision we view as an equitable one since the great majority of our U.S. citizens signed on with the Canal on the assumption that they could spend their careers living and working under U.S. jurisdiction.

(10) In addition to the recruitment and retention remuneration I referred to earlier, the bills would require that U.S. citizen employees of the Commission be paid an allowance to offset the cost of living increases they will experience as a result of losing military postal, commissary and exchange privileges. As you know, this will occur in October 1984, 5 years after the treaty enters into force.

EARLY RETIREMENT

(11) Probably the most publicized parts of the proposed bills—and to many of our employees the most important—deal with early retirement benefits. These provisions would allow employees who are involuntarily separated or scheduled to be separated as a result of implementation of the treaty to retire under more liberalized eligibility criteria than are normally available under a major reduction-in-force situation. For example, instead of requiring 25 years of service at any age or 20 years at age 50, with reduced annuity. The bills would require 20 years of service at any age or 18 years at age 48. In addition, the bills would not impose a reduction in annuity because of the age at which the employee retires.

(12) More important to the agency and its employees, however, are those provisions which would recognize the impact of the treaty on living and working condi-

tions by granting a continuing option, throughout the life of the treaty that is, through 1999, and for employees (U.S. and non-U.S. citizens alike) to retire voluntarily under similar liberalized eligibility criteria. To illustrate, an employee could retire voluntarily any time after he attains 23 years of service regardless of age, or after reaching age 48 and 18 years of service. Again, there would be no reduction in annuity because of the age at which the employee retires. Finally, those electing to stay on with the Commission would have their annuities computed at a higher rate than normal.

(13) While the Office of Personnel Management has authorized early optional retirement for Canal workers under existing major RIF provisions, our employees must exercise that option, if at all, between April 1 and September 30, 1979. Because the option is available for a limited period of time prior to treaty effective date, it will not contribute to the retention of our workforce beyond October 1.

(14) As I said, many of our employees consider the early retirement provision of the treaty legislation to be the most important one and a good percentage are deferring decision as to their futures until they know what the law will provide on that subject. If enacted in its present form, some will undoubtedly take advantage of its provisions and retire at once. I have high hopes, however, that the continuing option feature—that is, the fact that the option to retire under the liberalized eligibility and calculation criteria I have outlined will remain open throughout the life of the treaty—will cause the great majority to stay and “give it a try” with the Commission.

(15) If I am correct in that assessment, this should afford an opportunity for officials of the Commission and the Government of Panama to prove that transfer of jurisdiction can be effected without the kind of adverse consequences which have worried our employees. Assuming this can be done, and we are optimistic in this regard, then I believe that this early retirement option will do more than any other single feature of the legislation toward maintaining a skilled workforce at the Canal. If, on the other hand, the legislation were to be enacted with a significantly less liberal version of the early retirement option in it, I also believe that our ability to retain needed skills would be very seriously curtailed.

(16) In the area of labor-management relations, both bills would place in the law the treaty's recognition of the right of Commission employees to negotiate collective contracts. The collective bargaining system to be established would be developed along the lines of that contained in title VII of the Civil Service Reform Act.

SPECIAL IMMIGRATION

(17) There is one other provision of the bill which is of special interest to non-U.S. citizen employees in that it would confer special immigrant status on the following persons:

Non-U.S. citizen employees of the Company or Government who, on the effective date of exchange of instruments of ratification, are residing in the Canal Zone and who have performed faithful service for at least 1 year;

Panamanians who, prior to the entry into force of the treaty, have honorably retired from Government service in the Canal Zone with 15 or more years of faithful service; and

Panamanians who, on the date of entry into force, have been faithfully employed by the U.S. Government in the Canal Zone for at least 15 years and who later honorably retire from that employment.

(18) This special immigrant status would also be extended to the spouse and children of employees in those three categories. The Administration's bill would waive the public charge provision with respect to these people for the 30 month transition period. This would, I believe, be an adequate period for those dedicated employees, whom I have just identified, to immigrate under the waiver of the public charge provision, to the United States. H.R. 111, on the other hand, would place no time limit on the waiver, and thus could establish a dangerous precedent.

(19) The special immigration provision is intended to afford long-time non-U.S. citizen employees (most of whom are Panamanian) who have spent their careers working with the United States Government on the Isthmus, as well as those residing under U.S. jurisdiction in the Canal Zone, the opportunity to come to this country if they so desire. This provision would appear to constitute an appropriate expression of appreciation by the U.S. Government for the contribution made by these loyal employees, many of whose ancestors participated in the construction of the waterway.

THE CANAL AGENCIES

(20) Before turning to the financial portions of the two bills, I think it is important that the Committee understand the nature of the present Canal organization. Since 1951, the agency known as the Panama Canal Company has been charged with maintaining and operating the Panama Canal and with conducting business operations incident thereto and incident to the civil government of the Canal Zone. The Company is a corporate agency and instrumentality of the United States and its operations are subject to the Government Corporation Control Act. The agency receives no appropriations, is totally self-sustaining and is required annually to pay interest to the Treasury of the United States on the U.S. Government's net direct investment in the Canal Company, as well as to reimburse the Treasury for a portion of the annuity payments to Panama and for the net cost of operation of the Canal Zone Government. The Company is authorized to borrow up to \$40 million from the Treasury, but has never had to make use of that authority. The affairs of the Company are managed by a board of directors consisting of between 9 and 13 members appointed by the stockholder who in turn is designated by the President of the United States.

(21) Although the Company is excluded from the Federal Tort Claims Act, it may sue and be sued in its own name. Because of the nature of its operations, claims against the agency for damages sustained by transiting vessels are common. Pursuant to the current Canal Zone Code, the Company is a virtual insurer for accidents occurring to vessels while they are in the locks of the Canal. For accidents occurring outside the locks, the claimant must affirmatively establish negligence on the part of a Company employee before the Agency is liable. Vessel accident claimants who are not satisfied with an award of damages may bring suit against the Company in the U.S. District Court in the Canal Zone. Claimants in other than marine accident cases may sue the Company in either the Canal Zone or the District of Columbia.

(22) The Canal Zone Government, also an independent agency of the United States, is administered by the Governor under the supervision of an officer of the United States designated by the President and is charged with the performance of the various duties connected with the civil government of the Canal Zone, including its protection, health, and sanitation. While the Canal Zone Government is an appropriated fund agency, the Company is required, as I noted earlier, to reimburse the Treasury for the cost of that agency's operations.

(23) As I have mentioned, the officer of the United States traditionally designated by the President to supervise the administration of the Canal Zone Government and to serve as stockholder of the Panama Canal Company is the Secretary of the Army. In carrying out those functions, the Secretary acts as the direct representative of the President of the United States. The Governor of the Canal Zone serves, ex officio, as President of the Panama Canal Company.

(24) As a general proposition, Mr. Chairman, the Administration's bill would pattern the Panama Canal Commission after the present Panama Canal Company, making only those changes in organization and functions as are required by the treaty, HR 111, on the other hand, would have the Commission take the form of the agency which operated the waterway prior to 1951.

(25) I would now like to draw your attention to some of the major provisions of the two bills and attempt to explain why we favor the Administration's version.

COMPARISON OF MAJOR FINANCIAL PROVISIONS

(26) The most striking contrasts between the two bills concern the financial structure which would be established for the Panama Canal Commission. We have noted seven major areas of difference between H.R. 111 and the Administration's Bill. I would like to enumerate them first and then go into some detail with regard to each.

(27) First, H.R. 111 proposes that the new Canal enterprise be established as an appropriated fund agency, whereas the Administration's version would continue for the Commission the corporate form of the Panama Canal Company.

(28) Second, H.R. 111 would require the Commission to deposit tolls and other revenues into the U.S. Treasury as miscellaneous receipts. Since such funds would not be earmarked for the use of the Commission, Congress would have to make appropriations to cover capital and operating needs of the commission, including payments to Panama required by the treaty. These appropriations would be based on estimates submitted more than a year in advance of the fiscal year in which needed. Normally, increases in costs over those budgeted would require additional appropriation authorization from Congress. In contrast, the Administration's version would require the Commission to continue the present practice of depositing all revenues on a day-to-day basis to a revolving fund account in the U.S. Treasury,

except for relatively small amounts which would be retained by the agency to meet its current operating and capital needs. At the same time, the Administration's bill would force the Commission to finance its operating and capital needs from its own revenues.

(29) A third significant difference lies in the fact that H.R. 111 would establish through appropriations an emergency fund of \$40 million which the Commission could draw against, without additional Congressional approval, to defray emergency expenses and to ensure continuous operation of the Canal if funds appropriated for operations and maintenance are insufficient for this purpose. The Administration's version, by continuing the corporate form, would retain for the Commission the Company's present flexibility to meet unexpected needs of any kind out of its own resources and would, in addition, provide the Commission with a line of credit by continuing the Canal Agency's \$40 million borrowing authority. The Commission would be required to repay, with interest, any funds borrowed pursuant to that authority. Under H.R. 111, on the other hand, additional deposits to the emergency fund would require appropriations.

(30) With regard to accounting policies, the Administration's bill would continue to subject the Canal enterprise to the Government Corporation Control Act, which requires business-type accounting. Under H.R. 111, the Commission would be required not only to continue business type accounting, but also to adhere to the policies and procedures for government accounting prescribed in the Accounting and Auditing Act of 1950. This would necessitate the maintenance of a supplemental set of books. It should be noted that, under either bill, the agency would be subject to audit by the General Accounting Office.

(31) Concerning depreciation of Canal property, the Administration bill would transfer the assets of the Company directly to the Commission and authorize their continued depreciation. In our view, this would allow depreciation of new plant assets, except for those financed through a capital surcharge to be included in the tolls base. H.R. 111, on the other hand, would provide for a reversion of all assets to the United States and, although it provides for depreciation as an expense for inclusion in the tolls base, it would appear that depreciation is to be taken on existing plant only; this, however, is not altogether clear.

(32) Although H.R. 111 and the Administration's bill have several cost elements in common for inclusion in the tolls base, H.R. 111 provides, in addition, for the inclusion of interest and amortization costs on the investment of the United States in the Canal enterprise, and for inclusion of the costs of the early retirement program. The Administration's version does not envision charging users of the Canal for these costs. On the other hand, the bill does include elements which take into account such special characteristics of the toll-setting process as the matching of costs and revenues over a given period of time and the desirability of maintaining toll-rate stability over as long a term as possible. Specifically, the Administration's bill provides for the inclusion in the tolls base of any unrecovered past costs and the establishment of reserves for the purpose of matching revenues with expenses. The lack of authority in H.R. 111 to include unrecovered past costs in the tolls base would result in the inability of the Commission to recover resources depleted during periods of operating losses. Without the reserve provision, the Commission would not set rates to cover a multi-year period, since programmed overrecoveries in the first year would go to Panama under the contingent payment requirement, instead of being reserved to cover a programmed under recovery in the final year of the toll-rate period.

(33) With respect to the contingent payment to Panama, the Administration's bill would also include a provision designed to preserve an adequate level of working capital for the Commission. H.R. 111 does not include such a provision.

(34) These are the seven major differences relating to financial matters in the two legislative proposals. A more detailed discussion of contrasting provisions in the bills will be set forth in the Canal agency's formal reports. I would now like to take a few minutes to discuss some of the major differences at greater length.

OPERATIONAL REQUIREMENTS

(35) It is obvious that the primary objective of both proposals is to provide the best framework for the Commission to operate the Panama Canal at maximum administrative and financial efficiency. Both proposals also envision that the Commission would be financially self-sufficient. In view of the fact that the present Canal organization, during its nearly 28 years of existence, has been able to maintain a high degree of stability in its toll rates with no diminution in the quality of its service to shipping, it is pertinent to ask whether the operations of the waterway will change in such a significant way under the treaty as to require a major change

in its financial structure. It is equally pertinent to ask whether the changes contemplated in H.R. 111 will improve operations of the Canal agency.

(36) The many changes that will be brought about by the entry into force of the treaty—such as the disestablishment of the Canal Zone, the transfer of the ports and railroad to Panama, the cessation of retail activities and the increasing participation of Panamanian citizens at all levels of the organization—will not alter the operating agency's essential nature as a business entity. Neither its role as an international public utility nor its clientele will change.

(37) The treaty requirements for greatly increased payments to Panama will place a greater tolls burden on the users of the Canal, narrowing the leeway which the Canal Company has had for recovering additional operating costs from shipping and making the need for efficient operation that much more urgent. In addition, the treaty requires that the United States turn the Canal over to Panama at the end of 1999 in operating condition. If a burden on the U.S. taxpayer is to be avoided, this requirement will mean that the Commission's operations must remain highly efficient throughout the treaty period.

(38) In summary, the changes to be brought about by the treaty may tend to increase the complexity of operations, but will not change the essential nature of those operations. In my view, therefore, the treaty does not provide sufficient basis for requiring a major change in the financial structure of the Canal agency. What remains to be asked, then, is whether operations will be conducted more efficiently under an appropriated fund agency rather than a corporate one.

THE APPROPRIATED FUND CONCEPT

(39) Underlying practically all of the major differences between the Administration's bill and H.R. 111 is the question of control. The Administration's proposal would retain the operating autonomy of the current corporate structure under the present system of controls exercised by the Congress and the Office of Management and Budget. H.R. 111 would bring the Panama Canal Commission under rigid strictures designed for the administration of government operations generally. Appropriated fund budgeting and accounting is used in government where there is not normally the yardstick of profit by which to measure the results of operations. It concentrates on the control and measurement of disbursements, and it can control them tightly; but the emphasis on disbursements makes it singularly inappropriate for use where revenues are generated through disbursements, and the relationship of the two is vital to the operation. Here it can result in less than optimum efficiency of operation.

EMERGENCY FUND

(40) The limitations of appropriated fund accounting applied to the Panama Canal operation are recognized by H.R. 111 itself, in that it establishes an emergency fund which the Commission could draw upon to defray emergency expenses and to insure continuous operation of the waterway if funds appropriated for the operation and maintenance of the Canal are insufficient for such purposes. It is intended that the Commission utilize this fund to accommodate workload surges, changed maintenance requirements, and other unanticipated costs, then some of the problems foreseen under an appropriated fund structure could be alleviated. There is no certainty, however, that such frequent routine use of the emergency fund, giving the Commission open access to cash for all unforeseen needs, is contemplated or would be tolerated. Our reading of the sectional analysis accompanying H.R. 111 leads us to conclude that access to the emergency fund is intended to be on a more restricted basis than is the use of the borrowing authority. In any event, it appears clear that the emergency fund would not be available for treaty payments to Panama. Such restrictions on the Commission's access to the emergency fund would hamper the ability of the agency to carry out its mission.

(41) For example, the normal time lag between the submission of an appropriated fund budget and the beginning of the fiscal year in which the appropriation is received and spent is more than a year. The corporate type budget submitted by the Company for fiscal year 1978 projected \$304.1 million in operating costs to handle 141.6 million Panama Canal net tons of traffic and all supporting activities. Instead, 157.3 million Panama Canal net tons passed through the Canal, costing \$314.3 million, which was more than covered by the increase in revenues generated by the additional workload. Had the Company been operating under the appropriated fund concept, it would have had to request a supplemental appropriation for the additional manpower and other costs associated with this unexpected traffic upturn. In order not to delay or turn away traffic, the Company would have been forced to

effect major reductions in non-transit related areas until that appropriation was granted.

(42) Another problem is foreseen with respect to the Panama Canal net tonnage and the contingent payments to Panama required by the treaty. As I have noted, it does not appear that the emergency fund would be available to make these payments. In the event that actual tonnage through the Canal exceeds budgetary estimates, the additional money needed to cover the tonnage payment would have to be sought by the Commission through supplemental appropriations. Concerning the contingent payment which, of course, will not be included in the agency's budget, there would be a delay in making the payment to Panama in any year in which revenues exceed expenditures since, again, the emergency fund would not be available and, accordingly, appropriations would be needed to meet this obligation. As you may appreciate, the situation I have just described could result in unnecessary conflicts with the Republic of Panama.

TWO SETS OF BOOKS

(43) Further recognition of the limitation of appropriated fund accounting is contained in the requirement of H.R. 111 that the Commission keep, in addition to the set of books for appropriated fund accounting, a second set for accrual type profit and loss accounting.

(44) Profit and loss accounting is indispensable to the Commission's operations. It will provide Commission management with timely and accurate financial information so that action can be taken to keep costs in line with revenues; it will provide the Republic of Panama the assurance that the determination that revenues have or have not exceeded expenditures has been done consistently and accurately; and it will provide the Congress with the only true measure of the Canal enterprise's economic condition. In short, nothing more than a profit and loss accounting system need be established. In my view, the supplemental set of books that would be required for appropriated fund accounting could be a cumbersome appendage that contributes nothing to the efficient operation of the Canal and, in fact, could provide the basis for controversy with Panama over the contingent payment.

FINANCIAL DISCIPLINE

(45) There is another major difference between the financial provisions of these two pieces of legislation. The Administration's bill would continue the existing requirement for the Canal to be self-sustaining—that is, for the agency to live within its resources. Although there are provisions in the Administration's bill for the Commission to seek appropriations in order to cover losses and to meet capital requirements, such appropriations would be forthcoming only upon the approval of Congress as exceptions to normal procedures. H.R. 111, on the other hand, would provide the Commission with routine, ongoing access to appropriations. If this latter financial concept is adopted, I foresee a potential risk that the link between revenues and expenses may become obscured over time, with the result that the Canal entity, since it is operating from appropriations rather than its own revenues, may become increasingly dependent upon taxpayer subsidy. In my view, this potential loss of self-discipline provides the strongest argument for supporting the provisions of the Administration's version of the treaty legislation dealing with the financial structure of the Commission, rather than those contained in H.R. 111.

(46) Moreover, other elements of existing control are broad. First, the legislation establishing the Company sets forth in considerable detail guidelines for its operation. Second, the agency's budget program is subject to a comprehensive, annual review by the Office of Management and Budget. Third, the Congress is provided the opportunity to examine the Company's operations in detail, and to impose its will for changes, through the annual review of the budget and its justification, both by the Senate and House appropriations committees and in the oversight hearings of the Merchant Marine and Fisheries Committee. Finally, there is the annual audit by the General Accounting Office of the Company's operations and finances, the results of which are reported to the Congress.

(47) These provisions for review would be retained in the financial structure established for the Commission by the Administration's bill and, in my view, they would be adequate to insure effective Congressional control over Canal operations.

(48) Congress, for many years, has incorporated government agencies which function primarily as commercial or business-type entities. The logic of this policy has confirmed by the 1947 Hoover Commission on the Organization of the Executive Branch, which made a government-wide study and produced the recommendation that agencies with "straight-line business activities be incorporated so as to secure greater flexibility in management and simpler accounting, budgeting, and audit

methods." In addition, Congress has assured its control over Government corporations through the Government Corporation Control Act, which brings "Government corporations and their transactions and operations under annual scrutiny by the Congress" and provides "current financial control thereof." The incorporation of the Panama Canal Commission would, therefore, be consistent with past Congressional policy.

PAST RECORD OF THE CANAL

(49) There is no better justification for continuation of the government corporation form for the Commission than the record of achievement amassed by the Panama Canal Company from its inception in 1951 to the present.

(50) During this period, the Company has been completely self-sufficient financially. Although it is authorized to seek appropriations to cover both losses and capital needs and to borrow up to \$40 million, it has never done so despite a 4-year period of operating losses. In fact, during its 28 years of existence, the Company has paid back to the United States Treasury \$40 million as a return on the Government's investment. It has also plowed back \$337 million of internally-generated funds in capital replacements and improvements to Company facilities. Finally, the Company has paid the U.S. treasury \$311 million in interest on the United States investment in the Canal agency.

(51) There are not many Government agencies that can boast of such a record. The use of the corporate form to carry out the legal requirement that the enterprise live within its resources has had a lot to do with that success, and it provides the best assurance to the U.S. taxpayer that the Canal will continue to be self-sufficient.

TOLLS OUTLOOK

(52) To conclude my remarks on the financial and organizational aspects of the two bills, I would like to address the subject of tolls. In the final analysis, the viability of the Canal depends upon the ability and the willingness of world shipping to pay the cost of its operation. As I said earlier, by establishing the Commission as a corporate agency, Congress will provide the maximum incentive for controlling costs. At the same time, care must be exercised not to overprice the value of the service. The more such costs are added, the greater the risk of driving away traffic.

(53) In that regard, H.R. 111 would place in the tolls base provision for interest, amortization of the United States investment in the Canal and the cost of the early retirement program. Our reading of the bill indicates that the investment to be amortized, as well as the base on which interest is to be computed, would be the net direct investment, rather than the full equity of the United States in the waterway. That is, the investment would not include retained earnings. On the other hand, under our construction of H.R. 111, the net direct investment would include the value of plant assets required by the treaty to be transferred to other U.S. Government agencies or to Panama.

(54) Based upon this construction, I have some very rough estimates of the toll increase that will be required effective October 1, 1979, in order to recover the increased costs of operating the Canal after that date. The Company is in the process of refining these cost estimates and will have more reliable figures available by mid-March.

(55) In presenting these estimates, I should point out that, because of North Slope oil movements through the Canal and a healthy growth in other segments of traffic, the Canal is presently experiencing a much higher level of traffic and tolls than previously forecast. Except for some possible diminution in North Slope oil movements, this high level of traffic is expected to continue at least through 1982 and the estimates I am about to give you reflect that outlook. Based upon the foregoing, it is estimated that under the Administration's bill, a toll rate increase of approximately 14 percent would be required. Under H.R. 111, which includes in the toll base provision for interest, amortization of the investment and early retirement costs, an increase of about 35 percent would be required. While I am fairly optimistic that rate increases of these magnitudes will prove to be adequate for the near term, I am unable to predict what the situation will be over the long term. We recognize that it is only a matter of time before we lose North Slope oil altogether. If this loss were to occur in this initial period, the rate increase contemplated by the Administration's bill would be approximately 22 percent, while under H.R. 111 it would be about 46 percent.

(56) It should be noted that these estimates do not take traffic sensitivity into account. To the extent that these increases would result in a diversion of traffic, still greater increases would be required to cover revenue losses attributable to the diversion.

(57) In that regard, the company is in the process of completing a new study on the sensitivity of traffic to tolls increases, the results of which should be available by mid-March. The tentative findings of this study are that a tolls increase up to 25 percent would not have a significant impact on traffic. Increases from 26 percent to 40 percent, however, would have a slight impact on traffic, and would require some adjustment in tolls to cover revenue losses attributable to traffic diversions. These conclusions are generally consistent with and confirm findings reached in a previous study completed in January 1978. While the current study has not addressed increases above 40 percent, based upon those earlier conclusions it appears likely that toll hikes in excess of that figure would trigger progressively greater diversions in traffic.

(58) Of course, the determination of whether the costs of the early retirement program, and of interest on, and amortization of, the investment of the United States in the Canal should be included in the tolls base—as H.R. 111 proposes—must be based upon national policy considerations. As the operator of the Canal, however, my concern is whether the value of Canal services is such that world shipping will be able and willing to bear these costs. As evidenced by the foregoing tolls estimates, the long-term financial viability of the waterway would be much more uncertain under the tolls formula contained in H.R. 111 than it would be if tolls were set according to the Administration's formula.

(59) I would now like to discuss briefly for you the differences between the two bills in the area of claims against the Commission.

CLAIMS

(60) The Administration's bill would continue for the Commission the Company's present amenability to suit, and would establish the agency's residence for venue purposes in the District of Columbia and the Eastern District of Louisiana. In vessel accident claims, the Commission could be sued only in the latter jurisdiction.

(61) Article XVIII of the Agreement in Implementation of Article III of the treaty provides that non-contractual, third-party claims for damages caused by Commission employees in the performance of their official duties will be presented to that agency for settlement, and that the Commission will assure payment of appropriate damages, if any are due. The Administration has interpreted that provision to mean that a showing of negligence on the part of Commission employees is required before damages may be paid. Accordingly, it was necessary to amend the Canal Zone Code which, as I said earlier, makes the Company a virtual insurer for vessel accidents occurring in the locks. Because the vessel will be under the exclusive control of the Commission's employees while it is in the locks, however, the Administration's amendment would place the burden of proof on the agency, rather than on the claimant, in the first instance. In other words, the Commission would have to establish its freedom from negligence in order to avoid liability. For non-locks cases, the Administration's bill would continue present law, which has been interpreted to require the claimant affirmatively to establish negligence on the part of agency employees before the claim may be paid.

(62) In both locks and non-locks cases, the Commission could be sued on vessel accident claims in the Eastern District of Louisiana. That jurisdiction was selected because of its relative proximity to the Canal and, more importantly, because of the recognized expertise of its bench in handling admiralty cases.

(63) H.R. 111 would change the liability situation back to the way it was between 1940 and 1951. That is, the Commission would not be amenable to suit for non-maritime claims but would have the authority to pay up to \$60,000 on such claims. With regard to ship accidents, the Commission would be suable only for casualties occurring in the locks and would remain a virtual insurer in those cases. In vessel accidents occurring outside the locks, the Commission, although not suable, would be authorized to pay up to \$60,000. Claims in excess of that amount would have to be presented to the Congress for consideration.

(64) We question whether the figure of \$60,000 has any relevance to present-day repair costs. Based on the consumer price index, materials which cost \$60,000 in 1940 now cost more than \$315,000. According to the index of shipping costs in the United States, shipyard costs for labor and materials were 615.8 percent higher in August 1978 than they were in 1940.

(65) Our claims experience in recent years seems to confirm these increases. During the period from fiscal year 1974 to 1978, the Company paid more than \$60,000 on each of 17 claims arising from vessel accidents occurring outside the locks. Thirteen of these payments were over \$100,000, of which seven were over \$200,000, two here over \$300,000 and one amounted to almost \$2 million. Even more striking are the non-locks claims which arose during that same period but which

have not yet been settled. Forty-one such claims, totalling more than \$15 million, remain to be disposed of. Twenty-eight of those claimants are seeking more—many considerably more—than \$60,000. Finally, during fiscal year 1977 and 1978, there were a total of 46 vessel accidents occurring outside the locks for which the Company has not yet been presented with claims. We have budgeted a total of about \$5,300,000 for these potential claims. That figure includes estimates of over \$60,000 for 15 of these accidents.

(66) In any event, it is important to realize that it is world shipping, and not the United States, which bears the cost of ship accidents occurring at the Canal, since reserves to cover vessel damage claims against the agency are included in the tolls base. In view of that circumstance, and because the present system has worked satisfactorily over the last 28 years, a return to the pre-1951 scheme of liability would seem to be unwarranted.

TIMELY PASSAGE OF LEGISLATION

(67) I would like to take advantage of the Subcommittee's invitation to testify here today to stress the need for timely enactment of the treaty implementation legislation. In our view, delay in its passage beyond early summer will impact adversely on our personnel administration, labor relations, financial management and relocation of activities. If I may take a few minutes to do so, I would like to review for you some of the more important problem areas which we have been able to identify.

(68) In the field of personnel, for example, the Department of Defense and Canal agencies, as well as many Panama Canal employees, will be adversely affected if the early optional retirement provisions are not in force by July 1. Lack of the early-out retirement option will leave employees not otherwise eligible to retire little choice but to accept transfers to DOD agencies and placement offers within the Panama Canal Commission. However, many of these same individuals will retire as soon as the treaty legislation is passed. If this occurs after July 1, it may be too late for DOD to rework the reduction-in-force action it will have underway at that time and too late to recruit needed replacements for the employees who decline transfers in favor of early retirement.

(69) It will also be too late for the Panama Canal organization to rework its complex reduction-in-force actions to retain employees scheduled for termination by placing them in the positions vacated at the last minute by the retiring employees. Additionally, in rare instances, employees in hard-to-fill positions for which U.S. recruitment is essential and who had received a notification of separation, may have already accepted an offer in the United States, leaving no qualified applicants available locally to fill last-minute vacancies created by retiring employees. This will cause disruptions in fulfilling our mission due to understaffing and to the time required to recruit replacements from the United States. Moreover, this situation would have an inequitable effect on those former employees who might not have been otherwise terminated and who are subsequently rehired by the Commission, in that it would appear they would not be eligible for grandfathered pay or early retirement benefits.

(70) If there were to be no implementing legislation by October 1, when the treaty goes into effect, the transfer of approximately 3,000 employees to DOD agencies will be effectively prevented because those agencies will not be authorized to conduct the transferred functions or to pay the transferred employees out of appropriated funds. This will result in the transferred employees being left on the rolls of the organization, although the agency would be precluded by the treaty from performing these functions. The question would then arise as to whether there is authority to pay such individuals. Further, these employees could not be separated without appropriate advance notice under reduction-in-force procedures. This would take an additional 60 to 90 days. It would also result in many reduction-in-force actions taken against other employees effective October 1 being incorrect because the bumping patterns would have improperly excluded the employees who were transferred. This would probably result in an inability to effect separation on October 1 as scheduled until the entire reduction-in-force is reworked to include the excluded employees in order to effect proper displacements. Moreover, new employees could not be hired under Panama Social Security in accordance with the terms of the Agreements in Implementation of the treaty because present law, which would continue in effect, provides that all permanent employees must be covered under the U.S. Civil Service retirement system.

(71) The problem is even more complex in the area of financial planning since our appropriation committee has advised that it does not wish to approve any reprogramming costs without first providing the Congress an opportunity to act on the implementing legislation. There is also the possibility of a similar delay with respect

to supplemental appropriation authorizations which this agency has proposed for the repatriation of employees, payment of terminal annual leave for Canal Zone Government employees, and exhumation and reinterment of remains in Canal Zone cemeteries pursuant to Executive Order No. 12115.

(72) For example, delay beyond March 31 of approval of congressional reprogramming authority will require significant amounts of overtime in order to accomplish treaty-related actions. This will result in higher costs for those actions. Some actions may have to be carried forward to fiscal year 1980 which would also result in higher costs. The situation in this area will worsen the longer the authority is delayed.

(73) A more delicate problem is presented by the treaty requirement to move the remains of deceased U.S. citizens from Mt. Hope to Corozal Cemetery prior to entry into force. Because of a mandatory three-month waiting period after notification of next-of-kin, we are already faced with the prospect of having to carry out this project during the rainy season, which begins in April. The adverse climatic conditions which will prevail will make completion of the project within 6 months difficult enough. If funds are not approved by the first part of April, thus further delaying commencement of the project, it is doubtful whether this work will be completed prior to the entry into force deadline.

(74) While all of the impacts which we foresee will be adverse from an operational standpoint, I feel that the potential for employee discontent among the Canal workforce is likely to hold the most serious consequences. As I have said, our employees so far have continued to perform their jobs with remarkable efficiency, considering the circumstances. I fear, however, that if the provisions of the legislation containing employment benefits are not timely enacted, morale will deteriorate to such an extent that job performance will almost certainly suffer. This situation can be expected to worsen as October 1 approaches.

(75) At this point, in response to the Subcommittee's request, I would like to give you a brief explanation of the progress to date of the U.S./Panamanian committees which are engaged in planning for implementation of the treaty.

PLANNING FOR IMPLEMENTATION

(76) Formal planning sessions between Panama Canal agencies and the Government of Panama began in early 1978. In the summer of that year, specific guidelines were developed for the formalization of the Binational Working Group which is generally considered to be the predecessor to the Coordinating Committee called for by the treaty documents. Joint working subcommittees, whose membership is made up of representatives from our two countries, were also established. Subjects being addressed by the subcommittees range from operational transfers, such as the ports and railroad, to areas of employee and community interest including personnel, housing, social security, utilities, the environment, and police and fire protection.

(77) Our initial subcommittee goals were to familiarize the members with the provisions of the treaty and related documents and to formulate specific objectives, the accomplishment of which would be responsive to treaty requirements. Individual subcommittee objectives were approved by the Binational Working Group during meetings held in September and October of last year.

(78) In the early weeks of subcommittee work, Panamanian Government officials, Panamanian subcommittee members and their supporting advisors were afforded orientation briefings and field inspections to acquaint them with Panama Canal facilities and areas in the Canal Zone. Detailed listings of equipment and personnel presently employed in certain Canal operations have also been provided to Panamanian subcommittee members for their use in determining internal Government of Panama resource requirements.

(79) At the present time, the joint subcommittees are completing their first planning phase, which includes the finalization of a schedule for the accomplishment of actions necessary for treaty implementation. Upon completion of staff review of the planning documents by the Canal organization, the U.S. Southern Command and the U.S. Embassy in Panama, the plans will be submitted to the Binational Working Group for final approval.

(80) Discussions in the joint working subcommittees and the Binational Working Group are being conducted in a spirit of cooperation with representatives of both governments working in common to achieve the objectives set forth in the treaty. The planning effort we are currently involved in is an extremely complex and demanding endeavor. I can assure you, however, that the desire for successful accomplishment of this task is equally strong on both sides.

(81) Probably the most complicated area in our planning involves the Railroad and the Ports of Balboa and Cristobal which are scheduled for transfer to Panama upon entry into force. While Panama has stated repeatedly that it will assure

operational responsibility for the ports and railroad on October 1, it has also indicated in recent weeks that it would like the Panama Canal Commission to assign certain of its employees on a temporary basis to work for that government and to have the commission continue to perform certain supportive functions on a reimbursable basis.

(82) As to whether the Commission will be able to assist Panama in running those operations that are turned over to that country pursuant to the treaty, the answer appears to be a qualified "yes". The Panama Canal Commission's fiscal year 1980 budget is based on the proposition that, effective October 1, Panama will perform those functions transferred to it by the treaty documents. There are, however, provisions in the treaty which would permit the Commission either to assign its employees to assist Panama in the operation of those activities, or to continue to perform them itself until such time as Panama can take them over. Availing itself of those provisions, Panama has now stated that it desires assistance and, accordingly, appropriate revisions will have to be made to the FY 1980 budget to reflect the additional resources that will be required. As I have indicated, Panama will reimburse the commission for any assistance provided by that agency. We have informed the Government of Panama that any further requirements it may have must be made known to us in the very near future if the commission is to have the resources to provide such support on October 1, 1979.

CONCLUSION

(83) In conclusion, I would like to urge that, for the reasons I have stated, the Subcommittee give serious consideration to the Administration's bill which we see as providing the more viable financial structure to the agency operating the Canal. I would also like to reiterate the pressing need for timely enactment of the treaty legislation. That concludes my opening statement, Mr. Chairman. I will now attempt to answer any questions which you or other members of the Subcommittee may have.

Mr. MURPHY. If you will proceed, Governor.

Governor PARFITT. As you know, the new treaty will enter into force on October 1 of this year. When it does, the Canal Zone, which has existed under U.S. jurisdiction since its creation in 1904, will be disestablished and the Republic of Panama will assume plenary jurisdiction over that area in accordance with the terms of the treaty.

That document requires that, upon entry into force, the present canal agencies, the Panama Canal Company and the Canal Zone Government, cease operations in what is now the Canal Zone; it also states that the United States will carry out its responsibilities to manage, operate, and maintain the waterway until the end of the century by means of a new U.S. Government agency called the Panama Canal Commission.

To date, two bills designed to establish this new agency and implement other non-self-executing provisions of the treaty documents have been presented to the Congress.

The first of these, H.R. 111, sponsored by the chairman of the Merchant Marine and Fisheries Committee, Mr. Murphy, was introduced on January 15. The administration, on January 31, submitted a draft bill introduced as H.R. 1716. They differ in many substantive respects.

I would like to confine my remarks today to those points which I see as having the greatest potential impact on the efficient operation and financial viability of the Panama Canal.

In my view, the most important portions of the two bills are those dealing with canal employees. There do not appear to be any significant differences between the administration's bill and H.R. 111 in this area.

While I will defer to the Office of Personnel Management on the details of these provisions, I would like to begin my testimony today by reviewing some of the major employee provisions of the two bills because of their importance to our workers and hence to the continued, efficient functioning of the canal organization.

To start with, under article X of the treaty, the Commission is authorized to pay, over and above basic compensation, additional remuneration to certain categories of employees. Both bills fix the ceiling on this differential at 25 percent of the rate of basic compensation paid for the same or similar work performed by U.S. Government employees in the United States.

A differential, currently 15 percent, has been paid by the canal for many years and has provided one of the most effective incentives for recruitment and retention of a skilled work force. Since the need for highly skilled employees not readily available in Panama will continue for the foreseeable future, we consider this provision to be an important one.

With the inevitably significant change which the loss of U.S. jurisdiction will bring, the bills recognize the importance of preserving, to the maximum extent possible, the present quality of life for canal employees by placing in the law the treaty guarantee that the terms and conditions of employment with the Panama Canal Commission will in general be no less favorable to persons already employed by the Company/Government than those in effect prior to October 1, 1979.

These provisions would extend that guarantee to those Company/Government employees who are transferred to other U.S. Government agencies in Panama as a result of the treaty.

For those U.S. citizen employees of the Company/Government who are either displaced as a result of the treaty or who decide that they do not want to continue their employment in Panama, the bills would require the Office of Personnel Management to develop and administer a governmentwide program of placement assistance. This provision we view as an equitable one since the great majority of our U.S. citizens signed on with the canal on the assumption that they could spend their careers living and working under U.S. jurisdiction.

In addition to the recruitment and retention remuneration I referred to earlier, the bills would require that U.S. citizen employees of the Commission be paid an allowance to offset the cost-of-living increases they will experience as a result of losing military postal, commissary, and exchange privileges. As you know, this will occur in October 1984, 5 years after the treaty enters into force.

Probably the most publicized parts of the proposed bills—and to many of our employees the most important—deal with early retirement benefits. These provisions would allow employees who are involuntarily separated or scheduled to be separated as a result of implementation of the treaty to retire under more liberalized eligibility criteria than are normally available under a major reduction-in-force situation.

More important to the agency and its employees, however, are those provisions which would recognize the impact of the treaty on living and working conditions by granting a continuing option, through the life of the treaty, that is, through 1999, for employees,

U.S. and non-U.S. citizens alike, to retire voluntarily under similar liberalized eligibility criteria.

As I said, many of our employees consider the early retirement provision of the treaty legislation to be the most important one and a good percentage are deferring decisions as to their futures until they know what the law will provide on that subject.

If enacted in its present form, some will undoubtedly take advantage of its provisions and retire at once. I have high hopes, however, that the continuing option feature, that is, the fact that the option to retire under the liberalized eligibility and calculation criteria I have outlined will remain open throughout the life of the treaty, will cause the great majority to stay and give it a try with the Commission.

If I am correct in that assessment, this should afford an opportunity for officials of the Commission and the Government of Panama to prove that transfer of jurisdiction can be effected without the kind of adverse consequences which have worried our employees.

Assuming this can be done, and we are optimistic in this regard, then I believe that this early retirement option will do more than any other single feature of the legislation toward maintaining a skilled work force at the canal. If, on the other hand, the legislation were to be enacted with a significantly less liberal version of the early retirement option in it, I also believe that our ability to retain needed skills would be very seriously curtailed.

In the area of labor-management relations, both bills would place in the law the treaty's recognition of the right of Commission employees to negotiate collective contracts. The collective-bargaining system to be established would be developed along the lines of that contained in title VII of the Civil Service Reform Act.

There is one other provision of the bills which is of special interest to non-U.S. citizen employees in that it would confer special immigrant status on certain persons.

This special immigrant status would also be extended to the spouse and children of employees in those three categories.

The special immigration provision is intended to afford long-time non-U.S. citizen employees, most of whom are Panamanian, who have spent their careers working with the U.S. Government on the isthmus, as well as those residing under U.S. jurisdiction in the Canal Zone, the opportunity to come to this country if they so desire.

This provision would appear to constitute an appropriate expression of appreciation by the U.S. Government for the contribution made by these loyal employees, many of whose ancestors participated in the construction of the waterway.

I would now like to turn to other areas of the two bills.

As a general proposition, Mr. Chairman, the administration's bill would pattern the Panama Canal Commission after the present Panama Canal Company, making only those changes in organization and functions as are required by the treaty. H.R. 111, on the other hand, would have the Commission take the form of the agency which operated the waterway prior to 1951.

Underlying practically all of the major differences between the administration's bill and H.R. 111, is the question of control. The

administration's proposal would retain the operating autonomy of the current corporate structure under the present system of controls exercised by the Congress and the Office of Management and Budget.

H.R. 111 would bring the Panama Canal Commission under rigid strictures designed for the administration of government operations generally. Appropriated fund budgeting and accounting is used in Government where there is not normally the yardstick of profit by which to measure the results of operations.

It concentrates on the control and measurement of disbursements and it can control them tightly, but the emphasis on disbursements makes it singularly inappropriate for use where revenues are generated through disbursements, and the relationship of the two is vital to the operation. Here it can result in less than optimum efficiency of operation.

Moreover, other elements of existing control are broad.

First, the legislation establishing the Company sets forth in considerable detail guidelines for its operation.

Second, the agency's budget program is subject to a comprehensive, annual review by the Office of Management and Budget.

Third, the Congress is provided the opportunity to examine the Company's operations in detail and to impose its will for changes through the annual review of the budget and its justification, both by the Senate and House Appropriations Committees and in the oversight hearings of the Merchant Marine and Fisheries Committee.

Finally, there is the annual audit by the General Accounting Office of the Company's operations and finances, the results of which are reported to the Congress.

These provisions for review would be retained in the financial structure established for the Commission by the administration's bill and, in my view, they would be adequate to insure effective congressional control over canal operations.

There is no better justification for continuation of the Government corporation form for the Commission than the record of achievement amassed by the Panama Canal Company from its inception in 1951 to the present.

During this period, the Company has been completely self-sufficient financially. Although it is authorized to seek appropriations to cover both losses and capital needs and to borrow up to \$40 million, it has never done so despite a 4-year period of operating losses.

In fact, during its 28 years of existence, the Company has paid back to the U.S. Treasury \$40 million as a return on the Government's investment. It has also plowed back \$337 million of internally generated funds in capital replacements and improvements to Company facilities.

Finally, the Company has paid the U.S. Treasury \$311 million in interest on the U.S. investment in the canal agency.

There are not many Government agencies that can boast of such a record. The use of the corporate form to carry out the legal requirement that the enterprise live within its resources has had a lot to do with that success, and it provides the best assurance to the U.S. taxpayer that the canal will continue to be self-sufficient.

To conclude my remarks on the financial aspects of the two bills, I would like to address the subject of tolls.

I have some very rough estimates of the toll increase that will be required effective October 1, 1979, in order to recover the increased costs of operating the canal after that date. The Company is in the process of refining these cost estimates and will have more reliable figures available by mid-March.

In presenting these estimates, I should point out that, because of North Slope oil movements through the canal and a healthy growth in other segments of traffic, the canal is presently experiencing a much higher level of traffic and tolls than previously forecast. Except for some possible diminution in North Slope oil movements, this high level of traffic is expected to continue at least through 1982 and the estimates I am about to give you reflect that outlook.

Based upon the foregoing, it is estimated that under the administration's bill, a toll rate increase of approximately 14 percent would be required. Under H.R. 111, which includes in the toll base provision for interest, amortization of the investment and early retirement costs, an increase of about 35 percent would be required. While I am fairly optimistic that rate increases of these magnitudes will prove to be adequate for the near term, I am unable to predict what the situation will be over the long term.

We recognize that it is only a matter of time before we lose North Slope oil altogether. If this loss were to occur in this initial period, the rate increase contemplated by the administration's bill would be approximately 22 percent, while under H.R. 111 it would be about 46 percent.

It should be noted that these estimates do not take traffic sensitivity into account. To the extent that these increases would result in a diversion of traffic, still greater increases would be required to cover revenue losses attributable to the diversion.

In that regard, the Company is in the process of completing a new study on the sensitivity of traffic to tolls increases, the results of which would be available by mid-March.

The tentative findings of this study, however, are that a tolls increase up to 25 percent would not have a significant impact on traffic. Increases from 26 percent to 40 percent, however, would have a slight impact on traffic and would require some adjustment in tolls to cover revenue losses attributable to traffic diversions.

These conclusions are generally consistent with and confirm findings reached in a previous study completed in January 1978.

Of course, the determination of whether the costs of the early retirement program and of interest on, amortization of, the investment of the United States in the canal, should be included in the tolls base, as H.R. 111 proposes, must be based upon national policy considerations.

As the operator of the canal, however, my concern is whether the value of canal services is such that world shipping will be able and willing to bear these costs. As evidenced by the foregoing tolls estimates, the long-term financial viability of the waterway would be much more uncertain under the tolls formula contained in H.R. 111 than it would be if tolls were set according to the administration's formula.

At this point I would like to stress the need for timely enactment of the treaty implementation legislation.

In our view, delay in its passage beyond early summer will impact adversely on our personnel administration, labor relations, financial management and relocation of activities.

In response to the subcommittee's request, I would like to give you a brief explanation of the progress to date of the United States/Panamanian committees which are engaged in planning for implementation of the treaty.

Formal planning sessions between Panama Canal agencies and the Government of Panama began in early 1978. In the summer of that year, specific guidelines were developed for the formalization of the Binational Working Group which is generally considered to be the predecessor to the Coordinating Committee called for by the treaty documents.

Joint working committees, whose membership is made up of representatives from our two countries, were also established.

Discussions in the joint working subcommittees and the Binational Work Group are being conducted in a spirit of cooperation with representatives of both governments working in common to achieve the objectives set forth in the treaty. The planning effort we are currently involved in is an extremely complex and demanding endeavor.

I can assure you, however, that the desire for successful accomplishment of this task is equally strong on both sides.

Probably the most complicated area in our planning involves the railroad and the ports of Balboa and Cristobal which are scheduled for transfer to Panama upon entry into force.

While Panama has stated repeatedly that it will assume operational responsibility for the ports and railroad on October 1, it has also indicated in recent weeks that it would like the Panama Canal Commission to assign certain of its employees on a temporary basis to work for that Government and to have the Commission continue to perform certain supportive functions on a reimbursable basis.

As to whether the Commission will be able to assist Panama in running those operations that are turned over to that country pursuant to the treaty, the answer appears to be a qualified "yes".

The Panama Canal Commission's fiscal year 1980 budget is based on the proposition that, effective October 1, Panama will perform those functions transferred to it by the treaty documents. There are, however, provisions in the treaty which would permit the Commission either to assign its employees to assist Panama in the operation of those activities, or to continue to perform them itself until such time as Panama can take them over.

Availing itself of those provisions, Panama has now stated that it desires assistance and, accordingly, appropriate revisions will have to be made to the fiscal year 1980 budget to reflect the additional resources that will be required.

As I have indicated, Panama will reimburse the Commission for any assistance provided by that agency. We have informed the Government of Panama that any further requirements it may have must be made known to us in the very near future if the Commission is to have the resources to provide such support on October 1, 1979.

In conclusion, I would like to urge that, for the reasons I have stated, the subcommittee give serious consideration to the administration's bill, which we see as providing the more viable financial structure to the agency operating the canal.

I would also like to reiterate the pressing need for timely enactment of the treaty legislation.

That concludes my opening statement, Mr. Chairman.

I will now attempt to answer any questions which you or other members of the subcommittee may have.

Mr. MURPHY. Thank you, Governor. [Applause.]

Governor, you indicate that under H.R. 1716 initial toll increases would be about 14 percent and under H.R. 111 there would be about a 35-percent increase.

Would you tell us just what elements go into making up that 21-percent difference?

Governor PARFITT. First, I would like to say, Mr. Chairman, our estimates are based on our understanding of H.R. 111, which is possibly subject to correction. Based on our construction, the elements that went into it were first normal operational costs. The 14 percent applies equally in H.R. 111 and in H.R. 1716. To that is added the factor of interest on the investment and, as we understand H.R. 111, the investment base is to be the net direct investment as it will be before the treaty goes into effect.

Using those assumptions, the increase in tolls for that element, the element of interest is 10.72 percent. Additionally, we have computed the cost of amortization of the investment. Again, we have assumed that the investment referred to is the investment as it stands on the books the day before the treaty goes into effect, and have amortized that investment over the life of the treaty. The cost in terms of toll increases in doing that is about 6.3 percent.

The last factor is the question of whether the intent of H.R. 111 is to include costs, all costs, of additional retirement benefits. And we have assumed that it does so contemplate. The cost of that element would be an additional 4.37 percent, making a sum total of just over 35 percent.

Mr. MURPHY. We will have our staff give you a document as far as the intent of H.R. 111 is concerned on those different costs that you have just outlined.

Governor PARFITT. We will be very glad to review our estimates in light of such a determination, sir.

Mr. MURPHY. If we can turn to H.R. 1958, a bill introduced by Congressman Hansen of Idaho, that bill requires that all costs for implementing the treaty and related agreements be reimbursed through the Panama Canal Commission and thus through tolls.

Has the Company done any calculation to ascertain the magnitude of an initial and subsequent tolls increase to cover costs of the treaty under that bill?

Governor PARFITT. We have not, sir, but if you are only referring to the cost of the Commission, the costs of the Commission are all included in our estimates, with the exception of the cost of removing the bodies from Mount Hope.

Mr. MURPHY. The Hansen bill brings in some defense costs and some other costs. Do you think you could give us a document on the costs in H.R. 1958?

Governor PARFITT. We will be glad to do so, sir.

Could I further clarify that question, sir? You are referring to the fact that the bill contemplates that the Commission would reimburse the Treasury for costs regardless of whether or not they are borne by other agencies of the United States Government?

Mr. MURPHY. All costs, right.

Congressman Bonior?

Mr. BONIOR. Thank you, Mr. Chairman.

You gave for the chairman a breakdown of your estimates on the 35-percent figure, Governor.

Can you briefly do that for your 14 percent for us?

Governor PARFITT. Well, the 14 percent is merely the determination of a total cost of operation, normal operational costs of the canal organization, exclusive of interest and amortization, and the net deficiency requires a tolls increase of 14 percent to break even.

Mr. BONIOR. Now, your statistics relied heavily and your testimony did on the continuation of North Slope oil. You indicated in your testimony also that you will be doing a rerun of your figures which is expected in mid-March, which is an interesting time, I suspect, to have it come because of the deadlines this committee has in terms of reporting this legislation.

But, be that as it may, what considerations are you taking into account concerning North Slope oil in that mid-March study? Are you working with the administration in terms of what their position is going to be with respect to the oil?

Governor PARFITT. Yes; we are trying to find answers to the question of what the position of the administration will be with reference to tradeoffs.

Mr. BONIOR. And what have you found?

Governor PARFITT. So far as we understand it, there are some moves in the direction of getting a partial tradeoff. If that were to materialize, we would have a reduction in the North Slope oil movement. But we have nothing positive in that regard. The need for or the purpose behind our deadline date of March is that we have current law in existence which mandates a 6 months' lead-time of announcement of any intended tolls increase.

Treaty law mandates on the current canal organization a cost of operation which is far in excess of what it is bearing now, costs primarily in relation to payments to Panama. We feel that the Government and the corporate body here has an obligation to make those payments, so we have to go out, in our judgment, to the world with an announcement of an intended tolls increase. Such a toll increase would have to be based on existing law which requires payment of interest.

Of course, it would be based on a computation of interest as we would compute it, not necessarily as computed in H.R. 111.

Mr. BONIOR. Can you, for me and other members of the committee and those in the room who may not be too familiar with your study process and your methodology for determining toll increase, indicate to us who does the study and the composition of those people who do the study and if that composition is going to be changed significantly or changed at all because of the situation that we are engaged in right now?

Governor PARFITT. The basic tolls studies are conducted in-house by the Panama Canal Organization. We have from time to time hired consultants to augment our staff and to provide input to our staff. Most recently, in January 1978, we had consultants, International Research Associates, prepare an estimate of tolls. That estimate appears to be low at this particular point in time.

We are in-house revising that estimate in light of the realities of what is happening on the scene today and the realities are that we see on the horizon, the short term, a significant increase in traffic. The higher the level of traffic the less the need for a tolls increase. The only reason our initial estimate of 14 percent is so low is because we have an estimate of high traffic.

I don't think that our refined figures in March will deviate substantially from our results today, but it's just a question of refining many of our cost estimates and many of our projections.

Mr. BONIOR. Mr. Chairman, I just have two other questions, and I know time is precious and other members wish to question.

But let me anticipate a question from my colleague from Maryland, and ask you if in your toll increases, if in the studies that are going to be conducted and are being conducted right now, if that second contingency \$10 million payment that is so often discussed is being considered as a factor in that study?

Governor PARFITT. There is no inclusion of the \$10 million in the tolls requirements. It is not included.

Mr. BONIOR. One other question not related to the tolls but to your testimony on special immigration status: How many people are we talking about, and perhaps you could give us a brief description of the situation other than what you have outlined in your testimony?

Governor PARFITT. There are three categories of people who are involved, the first category being all non-U.S. citizens who are living in the Canal Zone with over a year of service. That is one category. It's a very small number of people. I would put it in the order of magnitude of about somewhere between 3,500 and 4,000, and that includes the spouse and children of those employees living in the Canal Zone.

The other two elements are harder to quantify. They are broken down between two groups, the first group being those panamanians who have more than 15 years of service and are already retired; and the last group is those who have 15 years of service as of the point in time when the Treaty goes into effect and subsequently retire.

We have tried to make a best estimate of exposure under the bill and our estimates were in total about 47,000, which includes spouse and children.

Mr. BONIOR. Forty-seven thousand including dependents?

Governor PARFITT. Yes, sir.

Mr. BONIOR. Thank you, Governor.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. Governor, I think you put your finger on it in the statement today where you said one of the major issues was the question of control, and you have made a strong case for the continuation of the corporate form that has been so successful since 1951.

I know you realize that the concern I have and others have is whether or not the corporate form is administered under the Commission the treaty creates would, in fact, allow that efficient operation without some sort of closer oversight by the Congress.

I am wondering if you had considered a marriage of the two approaches, a continuation of the corporate form but having the canal operation budget submitted to the Congress in advance for inclusion in the appropriations process each year, earmarking of the revenues in a special fund in the Treasury out of which those appropriations would be made, and the creation of some special either emergency or contingency mechanism to meet unsuspected costs, which would also require congressional approval.

I think you see what I am getting at in making this suggestion. Such a rewriting of the situation would not destroy the corporate form but would give the needed control many of us desire.

Governor PARFITT. We had not considered such. Obviously, there are many combinations of procedures that could be designed to meet the requirements. We have just thought from our experience that the corporate form has worked well. It provides management flexibility and the Congress has control which can be exercised to the degree the Congress wants to exercise it. The answer specifically to your question is we have not considered the alternative you proposed.

Mr. BAUMAN. As a first impression do you have an opinion of such an arrangement?

Governor PARFITT. Well, I would have to say that certainly such a thing would work, and if properly drafted it would remove the No. 1 problem, which is a problem of flexibility—permitting the operator to flex both in terms of providing the additional effort needed to take care of unforecasted traffic loads and also to encourage him to reduce level of effort when traffic is not materializing.

So it seems to me that the corporate form has the advantage of imposing some discipline on the manager in a downturn, whereas the appropriated fund concept would afford appropriated dollars which are available to the operator and could be spent even though the level of traffic would not warrant it.

Mr. BAUMAN. Not if they were earmarked from the revenues of the canal fund and kept segregated.

Governor PARFITT. The point you made would respond to that difficulty, yes, sir, and one would have to say that such a situation could work. Without looking at it in great detail as to how much additional work would be required, I don't know. My general philosophy in restructuring the organization here has been, one, not to make any changes that are not mandated by the treaty.

There are so many changes and so much turmoil here I would prefer to continue with the tried and tested systems and, of course, there would be ample opportunity, which is recognized in the administration's bill, to adjust within 2½ years as there is an intent to review all of the legislation and modify it as seen necessary.

It seems to me in that period of time if the fears that concern you materialize or appear to be real that some modification at that point in time could be worked out.

Mr. BAUMAN. Except the treaty makes it clear that the Congress has the power now to write the implementing legislation, and

taken together with the possible diplomatic problems with the Government of Panama 2 years hence that may be viewed as some sort of intrusion on their rights if we don't act now, it seems to me.

Governor PARFITT. I understand the concern you have.

Mr. BAUMAN. Let me ask you this:

You said in response to the gentleman from Michigan that your calculations of the chairman's bill costs in increased tolls did not take into account the second \$10 million contingency payment.

Governor PARFITT. That's correct, sir. Neither computation; neither the administration bill nor H.R. 111 include that as an element of cost.

Mr. BAUMAN. Don't you agree that the treaty is unclear as to what determines the availability of that second \$10 million?

Governor PARFITT. I believe the treaty together with the administration bill makes it expressly clear as to how that amount would be computed. I mean how the payment would be computed and whether it would be paid or not.

Mr. BAUMAN. But shouldn't we make it very clear in the law, even more clear that the second \$10 million is not available?

Governor PARFITT. I think it is important, regardless of what bill it is, that it's very clear how the calculation will be made so there is no question of the intent.

Mr. BAUMAN. There are others who want to ask questions and I have more myself at one point, but there is one question that has arisen in regard to the disposal of movable property, nonfixture property and we mentioned the locomotive, which is essentially not as important as the principle involved here.

It's my information that millions of dollars worth of movable machinery that are located in the areas that will go immediately to the Panamanian Government could or could not be moved for the use of the Canal Commission, far in excess of what that locomotive is worth.

Now, what is the situation in your bilateral negotiations, and what is the State Department telling you?

Are you told to leave all sorts of equipment and movable machinery and so on in the areas that will go immediately to Panama or are you moving those in order to accommodate the necessity of the running of the canal?

Governor Parfitt. The treaty is specific in some areas as to that property which will be transferred to Panama and is specific as to whether it will be transferred without cost.

For example, in the ports and the railroad specifically the treaty states that the plant, property, and equipment would go to Panama on a nonreimbursement basis. In some of the other areas the wording is a little more nebulous and there is more general phraseology. But clearly with reference to movable property the United States retains the right to dispose of it as it sees fit.

Mr. BAUMAN. Have you received any specific orders from on high to leave any categories of property in these areas that go to Panama?

Governor PARFITT. No. I have formulated what I consider to be a reasonable policy based on the treaty, and that policy was approved by our Board of Directors. Panama was informed of our intent to implement such a policy, and in terms of trying to work out any

problems that it may engender I have, within the last day or two, received a letter from Panama indicating some concern and some disagreement on that policy. So it remains to discuss the details of that.

That does not necessarily mean our policy should or would be changed.

Mr. BAUMAN. So there are no present plans that you know of to leave equipment that might not be necessary to the operation of the areas Panama immediately acquires?

Governor PARFITT. No, there are none, sir.

Mr. BAUMAN. One last question related to that.

In turning over certain of these immediate areas under the treaty, have any claims been made by the Republic of Panama that the U.S. Government has an obligation to upgrade the condition of facilities or buildings to a standard that is not now applied?

For instance, perhaps facilities that have not been used for many years.

Governor PARFITT. Panama has expressed in recent weeks concern that some property which exists in the Canal Zone, which is old, abandoned property, is not in the appropriate condition it had ought to be in for transfer to Panama. It has been our position and continues to be our position that we will maintain and continue to maintain in a high quality way all of the plant and equipment that we have in active use.

My instructions to our people, and I am confident they are being carried out, is to do just that. Therefore, I have every expectation that the plant and equipment to be turned over to Panama will be in as good a condition or better condition than it would have been if we were maintaining a continuing responsibility for the operation of that facility.

That leaves for consideration some facilities that are not in active plant. Some facilities, perhaps the ones you alluded to, are old abandoned facilities from shortly after World War II days. There has been no intent or no commitment on the part of the United States to other than turn them over in an "as is" condition. But there have been some statements in the press and some statements by certain officials to the effect that we ought to do better than that.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. Thank you, Mr. Chairman.

Governor, the oil situation is of some concern.

Could you tell me what kind of increase in price there will be on the oil that is moving through the canal with the increase of tolls?

Governor PARFITT. On the oil, sir, it would be very, very small. We made some computations to try to determine what the cost in terms of tolls is for moving a barrel of oil through the canal. Our estimate comes out to about 18 cents a barrel.

Mr. WYATT. Now?

Governor PARFITT. Now, per barrel. Now, if we are talking about an increase of tolls of 14 percent we are talking about a very small increase in cost of that oil. The 18 cents is also a very, very small portion of the total transportation costs of moving the oil from Alaska to the gulf and east coast of the United States.

So it's a very, very small percentage, and to me the movement of that oil would not be sensitive to any such change. It's relatively insensitive to tolls increases; it's such a small portion of the total cost of transportation.

Mr. WYATT. You are talking in terms of 14 percent to 35 percent?

Governor PARFITT. Well, even 35 percent, I am not too sure of the total cost of the transportation, but people talk in terms of \$2 to \$3, which is the cost of moving a barrel of oil, total transportation cost, of which we say 18 cents is related to the tolls through the Panama Canal. That's a very small portion of the total transportation cost, and so the question of moving and cost of moving the oil through the canal is more of total cost than it is of tolls.

Mr. WYATT. That's all, Mr. Chairman.

Mr. MURPHY. It would be no more than half a cent a gallon?

Governor PARFITT. On that basis.

Mr. MURPHY. On that basis.

Mr. LENT?

Mr. LENT. Thank you, Mr. Chairman.

Governor, as I understand, the basic difference between the administration bill and the H.R. 111 is that the administration bill would retain the operation or autonomy of the canal under the current corporate structure, whereas H.R. 111 would bring the Panama Canal Commission under the normal strictures for U.S. Government operations generally; in other words, under close supervision by the Congress with oversight and requiring annual appropriations for the operation of the Commission.

Do you not believe that requiring annual appropriations by the Congress would mitigate in favor of Panama keeping good U.S. relations, and exercising good behavior with respect to the implementation of the treaty with respect to the human rights policies, and so forth?

Governor PARFITT. To the contrary, sir. I think it poses some problems in relation to Panama.

For example, when we go through the budget process, which is generated some 18 months before the period involved, we do so based on estimates, say, for example, estimates of traffic. If those estimates were low and the traffic were higher, we would owe moneys to Panama but would have to go back through the appropriation process, with delays inherent therein, before we could pay Panama the amounts due by the terms of the treaty.

Mr. WYATT. Well, granted that there might be some friction with respect to the delay and so forth, but nonetheless it would be inherent in the process contemplated by H.R. 111 that Congress would be in a position constantly to oversee the operation of the canal and the implementation of the treaty on the part of Panama.

Governor PARFITT. Well, it certainly puts the Congress in close scrutiny over disbursements and that's my problem as an operator. It would, in my judgment, unless there are arrangements as suggested by Mr. Bauman, delay the ability of the canal to react to differing circumstances.

Mr. WYATT. For example, you say on pages 35 and 36 of your statement that Panama has already acknowledged that it lacks the ability to run the railroad and has requested assistance.

Now, how is that assistance going to be funded?

Governor PARFITT. I would like to characterize Panama's position a little differently. They have continuously said they have the ability and they will run the railroad, but the assumption early on was that the railroad would be severed from the current operation and the employees and all of the assets would go to Panama.

That does not necessarily happen in its entirety. For example, the railroad is supported by other elements of the current Panama Canal, and somebody has to provide that support. In looking at that arrangement Panama says perhaps they might need some more assistance, and that is contemplated by the treaty and they would get it by asking for it on a reimbursable basis, but more importantly—

Mr. WYATT. Excuse me, when you say on a reimbursable basis, in other words, you are saying that Panama will reimburse the Commission for any assistance provided by it?

Governor PARFITT. That is correct.

Mr. WYATT. From what source will that reimbursement come?

Governor PARFITT. Panama's general revenues, whatever source they determine. I am not sure of their funding arrangements, whether there will be direct appropriations from Panama to the entity operating that railroad, but it would come from Panama, perhaps through some subordinate agency, to the Commission.

Now, I didn't talk about the other element, which I think is even more important, and the reason why Panama has come to us probably for some support in the people area.

When the railroad transfers to Panama the individuals who operate that railroad are given a reduction-in-force notification. Those individuals have certain rights under the civil service system and they can, if they want to, bump back into the organization. If the wrong people or the highly technical people exercise that right, Panama would find they had a facility they thought was operative, but they would not have the key people there.

So the suggestion has been made to ask the Commission to provide some kind of assurance that those people would be there. So they have given us the names of certain people and asked us to keep those people on our rolls, on the Commission rolls.

That requires the Commission to obtain the authority for people and money, but Panama would reimburse all costs. Those people would be merely on our rolls and afforded the benefits provided by the implementing legislation and the treaty.

For example, if they were to drop from the rolls, they would have no authority for commission housing, nor would they have authority to use the PX and commissary privileges if they are U.S. citizens. They can keep these benefits if they stay on our rolls but are operationally under the control of Panama.

They are on our rolls; they work for Panama; complete operational control is with Panama, and Panama would reimburse us for all costs of providing that support. We are in the process now of trying to work that out.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. Thank you, Mr. Chairman.

Governor, how important to the successful attainment of the goals of the Treaty are the personnel incentives? You referred to that actually as your first point, I believe.

Governor PARFITT. Yes. It's number one priority, and a major aspect of the implementing treaty legislation. As I stated, if the appropriate package is not forthcoming, it will place in jeopardy the ability to continue to operate the canal efficiently.

Mr. LOWRY. Do we have the fiscal impact of those proposed personnel improvements, such as early retirement?

Governor PARFITT. We have an early figure which was provided by the Civil Service Commission. We have asked for that to be updated because we are not quite sure whether it's accurate at this point in time or not.

The figure given at the time—and this goes back about a year and one-half—is about \$8 to \$9 million a year for 30 years. That is the figure we used in computing the extra costs of H.R. 111 on the assumption that that cost would have to be amortized or paid off in 20 years, the life of the treaty. We have used that as it was the only figure we had to go on.

We have asked for an updated figure. It may well be overstated, but we are waiting to get that from the actuarial people from the Civil Service Commission.

Mr. WYATT. Obviously, that is something the committee would want as soon as possible. What was the retirement figure you were referring to, early retirement?

Governor PARFITT. The total cost, and we assumed that was the total cost of all of the people in the system, whether they ultimately worked for the Commission or other Federal agencies in the area.

Mr. WYATT. What about the other pay incentives? What is the fiscal impact estimate of that?

Governor PARFITT. The pay incentives there are the ones related to retirement. They include an increased annuity for continuing employees; those are included in the figure.

The other one we referred to in our testimony is the one that would provide to U.S. citizens, 5 years after the treaty goes into effect, a cost-of-living allowance to compensate for the increased costs to those U.S. citizens over that which they are paying for military postal, PX and commissary privileges. After that time they will have to go on the local economy.

We have made a very, very rough estimate, and it comes to about 15 percent, we think, of the base salaries. So that would be a 15 percent increment added. In terms of dollars, again, a very quick figure based on some rough estimates of how many U.S. citizens would continue to be in that category, we come to a figure of around \$10 or \$11 million.

I would like to point out that we have now 3,700 U.S. citizen employees. Quite a few of those are going to other Federal agencies. They are not involved in this cost-of-living allowance because they will continue forever having the benefits of postal, military and PX facilities.

Other individuals are going to be leaving the Isthmus on retirement, and so forth, so we think going into the treaty period in 1980 there would probably be about 2,200 Americans as opposed to 3,700 who potentially would be in this group, who would be eligible.

But there is a further diminution of that number because included in that number are police, for example, and they go out of

existence in 2½ years. There will be something less, in my judgment, than 1,700 people who theoretically would be eligible and would avail themselves or be permitted to avail themselves of a cost-of-living allowance.

Mr. WYATT. Is it imperative that these personnel improvements be part of the implementing legislation, or could those come along later during normal collective bargaining with the personnel?

Governor PARFITT. Well, it seems to me this should be put to rest in the legislation; it should not await collective bargaining. There are some questions about the issues that will be under negotiation in collective bargaining, and that sort of thing, and it would just leave uncertain the question of what benefits the people will have here and, therefore, make it very difficult for our employees to exercise a judgment as to whether they are going to stay here or not.

I think they should know the terms of reference so they can make a conscious judgment based on their own personal interests and that of their families and based on a full knowledge of what the terms of reference will be.

Mr. WYATT. Thank you very much.

Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. Thank you.

Governor, when we speak of the 14-percent increase we are speaking just of the amount of money we are going to have to generate to meet the terms of title XIII; is that correct?

Governor PARFITT. Well, all operational costs which include the title XIII payments to Panama, and the payments for cost of services. All costs included in the treaty are included in the cost of operation of the canal.

Mr. CARNEY. And other than the title XIII costs, what other costs are we speaking of?

Governor PARFITT. The normal costs of pilots, of the work force to operate the functions that we retain. We have made an analysis of how we intend to organize to carry out our functions that remain as responsibilities of the United States and estimated the total cost of that operation, and on top of that added the costs to be paid to Panama.

For example, the payment to Panama is computed to be, in 1980, about \$75 million, made up in part by the 30-cent-per-ton element, which about \$54 to \$55 million.

In addition to that, there is a \$10 million fixed payment and in addition there is \$10 million for services that they are going to render to us. So we have estimated in those cost figures I talked about, a \$75 million payment to Panama.

Mr. CARNEY. OK. Now, of that \$75 million, how much is the 14 percent? If we didn't have the treaty we would have had to raise tolls; that's the point I am trying to get to.

Governor PARFITT. You have to have a complete analysis. If you say without a treaty, right now I would have to project that probably we wouldn't need a tolls increase in 1980. We are generating excess revenues this year. We had a profit in 1978 of around \$16 million, and we expect to have about the same this year. In all probability we would be able to defer a tolls increase if there is no

treaty. If you ask the question what is \$75 million worth, it's worth about 35 percent.

In other words, we anticipate tolls in 1980 of \$227 million. That's without any increase and if you are trying to generate \$75 million more, you have got to add a little over a third on top of that. But that's a simplistic answer because you can't just say one element of the treaty does not go or another does not go.

Mr. CARNEY. No; I understand that, but we are talking about 14 percent, and I would like to have it clear in my mind as to how much more or how much of title XIII, how much of that 14 percent is caused by title XIII. That's significant to me.

As you said, you are running with a profit, this year, and you anticipate that same next year?

Governor PARFITT. Well, not the same; we will have roughly the same this year as last year, but next year there will be some diminution; traffic growth will probably not be as high as it is this year and inflation rate is increasing, as you know. Because in fact the treaty is law and we have to generate those costs, we have not made a hypothetical calculation of next year's results.

Mr. CARNEY. I totally understand that. In that increase of 14 percent do you anticipate the same type of quality as of October 1? There won't be any cost increase because of lack of quality in the operation of the Canal.

Governor PARFITT. The same level of quality and operational efficiency and the same level of maintenance applies.

Mr. CARNEY. I am not sure if you remember it when the gentleman from New York, Mr. Lent, asked you, you said that if we went with H.R. 111 that it would perhaps be necessary for the Congress to appropriate money to meet the needs of the treaty for Panama.

Governor PARFITT. Well, under H.R. 111, as I understand it, it would be necessary for the Congress to appropriate all dollars for everything.

Mr. CARNEY. That's true, but under the treaty the only money that Panama would be getting would be under title XIII, and that is not dependent on revenues generated by the use of the canal.

Governor PARFITT. Well, the treaty mandates those payments would be made from revenues generated from the canal.

Mr. CARNEY. And the amount of those in the treaty would be determined by the revenue generated by the canal so, in fact, we would never have to appropriate money under H.R. 111 to pay the Panamanians the obligations we would owe them because the treaty.

Governor PARFITT. What I was merely saying is under an agency kind of concept we have to indicate the dollars we need to support the operation, and in that estimate we would include payments to Panama based on an estimate of what they would amount based on the level of traffic we have assumed for our calculations.

In the budget year, the only dollars we would receive are those appropriations based on our estimates. If, in fact, when the year unfolded and traffic was higher, we would have to go back to ask Congress to increase that appropriation, because we would not have enough money appropriated to make the payments to Panama.

Mr. CARNEY. Yes, but the revenues going directly to the Treasury of the United States would increase also through the tolls.

Governor PARFITT. True, but they would not be available to the administration to pay.

Mr. CARNEY. The point I am trying to make is this:

The taxpayers of the United States would not be affected; we would not be all paying out of taxpayers' money those increases through H.R. 111, and I think that it is important that people know that.

Governor PARFITT. I am not suggesting there would be any more payments from the taxpayer from that kind of arrangement. I am just saying the efficiency of the operation and of the operator, and his flexibility could be diminished because he could not respond to that situation properly, nor could he respond, for example, by putting on extra effort to accommodate that traffic without appropriations of dollars.

For instance, our budget now, which does not require appropriated dollars, is based on an estimate of what the traffic load will be. Based on that traffic load we determine how many pilots we need, how many people at the locks, how many crews, and so forth, and we structure a cost base and that is in our budget.

If that traffic does not materialize, and managing on a profit and loss basis, we better reduce costs. Otherwise we are going to be showing a loss and we are required not to do that. Now, in the agency concept we would not have that normal compulsion; we would have appropriated dollars for the level of traffic predicted, and if you get less traffic than that you would not have the same degree of pressure to reduce costs.

On the other side of the equation it is worse. If your estimate was understated and you have more traffic you would want to put crews on to accommodate that traffic, because traffic is very sensitive to efficiency of operation—how many hours it takes for the ships to get through, et cetera—we could not do so because we would not have the dollars appropriated, even though the traffic was generating the money and money is flowing into the Treasury.

The agency could not incur additional costs until we went back to Congress through some mechanism for a supplemental.

Mr. CARNEY. I understand that. I just wanted to make the illustration we are not dealing with taxpayer money, that we are dealing with the mechanics of appropriations.

Governor PARFITT. Correct, sir.

Mr. CARNEY. And I wanted to make that clear. It sounded to me when you made the statement to Mr. Lent that it could not have been as clear, that you might have perhaps thought we would have to go to taxpayer money to make the increases.

One last question, Governor, and that is of some concern. You talked about the people, the Americans who wished to stay down here at the time when they have to go on the economy, you have worked out that it would be approximately 15 percent that they would need for a differential in their existing salaries because they lose benefits such as the PX, postal, and that type of thing.

Do you do that by taking a mean?

Governor PARFITT. That's a very rough estimate, sir. We took a very cursory analysis of the current cost of buying in the PX and

commissaries, food items, et cetera, and that of buying in Panama, and computed the differential—how much you would have to give to the employee to compensate him for that differential cost.

Now, you have to project yourself to 1984, and you are getting very, very, speculative when you do that because you are trying to compute what the cost would be in the PX, commissary system, and what the rate of inflation will be in Panama, and that's not a very exact science.

Mr. CARNEY. A concern I have is when we do things like that whether it be for people in Panama, or people in the military, people on the lower end of the pay structure who lost benefits are hurt the most. The people on the upper structure, in fact, will probably gain. The ones in between break even, and I just was concerned about those American citizens who would lose that. You know, there might be a way we can adjust that.

Governor PARFITT. I see. Certainly, I gave a round figure. This is an average across the board. It could well be that the impact percentagewise is higher on a low income individual in terms of his salary. I would agree with that.

Mr. CARNEY. Thank you.

That is all, Mr. Chairman.

Thank you very much.

Mr. MURPHY. Governor Evans?

Mr. EVANS. Thank you, Mr. Chairman.

Governor, I notice in your report that the Company has plowed back about \$337 million in capital improvement, and so forth, over the past 28 years. That comes to about \$12 million a year.

Now, already there are pressures being brought to bear to improve these facilities. The treaty talks about turning it over in operating condition. Without the brakes and the constraints being put on by congressional review by the budget, what is there to prevent the Company from being pressured into turning over the canal in mint condition, incurring a loss at that time and, therefore, forcing the payments to be brought from other sources, taxpayers, for example?

Governor PARFITT. First of all, the means by which the Company generated the cash to invest in this plant and equipment was through a normal corporate process of depreciating their assets. In other words, the cost of doing business includes the depreciation of your assets and you include that in the cost of the tolls and the tolls then generate the necessary cashflow. So that this \$337 million was generated by the Company partially through depreciation, and partially through profits.

Now, we have recognized that in the future, with the rapid inflation in cost of replacements, that the depreciation process is unlikely to generate sufficient dollars, so the administration bill permits the Commission to load into the tolls base the additional amount of money that is required above depreciation to provide for adequate plant.

So the mechanism is there, and the control is there, of the Commission, through the budget process to ensure that there isn't just an open door to profligate expenditures but, at the same time, to provide the opportunity for the Commission to fulfill its commitment to turn over the Canal in an operative condition.

Mr. EVANS. But I don't know if you got the full import of my question. The thing is, who determines what is adequate? How does the Company withstand the pressures to spend an inordinate amount of money in improving these facilities for turnover date?

Governor PARFITT. I think the answer to that is today we have the same kind of situation, and the manager has to determine what a prudent level of expenditures is, and today I happen to be the individual who makes that determination and submits the budget to the Board of Directors, and the Board of Directors reviews it in great detail, exhaustively, to determine whether it's an appropriate level of investment or not.

After they have finished their review, the Office of Management and Budget does likewise, and after they have finished, I go and defend the budget before the Appropriations Committees of Congress. So we have a layering of controls that will continue.

Mr. EVANS. So, then you don't believe that the additional budget procedures mandated in H.R. 111 would give you extra protection from these pressures.

Governor PARFITT. There is no question but what it would more tightly control expenditures. That is clear.

Mr. EVANS. One more question:

You mentioned that the Panamanian Government is supposed to reimburse, give reimbursement for the expense incurred in rendering assistance. What objection would you have, rather than doing it that way since the reimbursement procedure would be sort of indefinite, what objection do you have in deducting it from whatever was paid before rather than waiting for reimbursement?

Governor PARFITT. We have already contemplated we would work out some kind of arrangement which would permit the Commission to offset. In other words, any amounts due from Panama would probably be offset against amounts due from the Commission to Panama. It's our hope we can work out some such arrangement.

Mr. EVANS. Thank you.

Mr. MURPHY. Governor, the joint subcommittees are completing their first planning phase. Would you tell us how that first planning phase has gone?

Governor PARFITT. I think the planning phase has gone very, very well. But, as you know, in initial phases of something like that it's like building a foundation and nothing appears to happen, and you don't really see the progress until the structure begins to rise out of the ground.

I think we are at that position right now where we have identified almost all of the problems, we know the issues, and we are zeroing in on getting agreements and solving, hopefully, the potential problems that might arise.

So I am very encouraged, but I still recognize that there is a lot to be done between now and October 1. We are going to remain apprehensive about that until our work is accomplished.

Mr. MURPHY. Is the fact that implementing legislation has not yet been signed holding back some of those agreements?

Governor PARFITT. I don't think the implementing legislation in this particular area is delaying the planning with Panama; that has to be done regardless. There are other areas of much more

concern to me, the employee one and, for example, I have a problem with relocations.

We must turn over to Panama substantial facilities and assets. Where those facilities are transferred to Panama and the function goes to Panama I have no real problems; but, we have many instances where the facilities transferring to Panama on October 1 have people housed therein performing a function which remains a responsibility of the United States.

So we need to receive and spend some money to provide a new home for those people. I have approached the Appropriations Committees to permit me to reallocate some funds but the Appropriations Committee has not yet authorized me to do so until they have a better chance to look at the legislation, they say. So we are kind of waiting for that clearance, and I hope that will be forthcoming very soon.

Mr. MURPHY. I communicated to the Appropriations Committee in support of your request.

Governor PARFITT. I appreciate that very much.

Mr. MURPHY. How many tugs does the Panama Company operate?

Governor PARFITT. Fifteen.

Mr. MURPHY. How many are necessary for the operation of the canal?

Governor PARFITT. Fifteen.

Mr. MURPHY. So there are no tugs left over for tangential reasons?

Governor PARFITT. No. In fact, we are in the market for the acquisition of an additional tug. It's in our program for fiscal year 1979, and we hope to be getting out bids on that very soon.

Mr. MURPHY. Would you address yourself to the environmental degradation of the watershed area?

Governor PARFITT. For as long as I have had any connection with the Panama Canal, and that goes back to the early 1960's, there has been concern here because of the degradation of the watershed area. For years the Canal Zone authorities have been successful in holding back the degradation within the zone. But here in the last years—recent years—the degradation that has been very apparent outside the zone has begun to be seen in the Canal Zone.

We, together with Panama, have attempted in the last year to alert all concerned to this grave problem and the detrimental effects on the water system if it is not checked, and I am very encouraged by the cooperation that Panama has given to us in articulating this point of view.

We are also accelerating our efforts within the zone to hold in check the slashing and burning that goes on. We need an even more aggressive program and, hopefully, together we can work out one with Panama. We are trying to do so. But beyond that we need to provide some means to divert the sustenance farmer from this deleterious activity.

In that regard I am encouraged also by the fact there is an aid program which involves in reforestation in Panama. There is high hope on our part that such will be consummated between the United States and Panama very shortly and some of that money

can be used to provide a livelihood for these people who are doing this damage to the watershed area.

Mr. MURPHY. Should this implementing legislative package address itself to that?

Governor PARFITT. I believe that the treaty deals with it in terms of establishing an environmental committee, and I would hope that the environmental committee could become very, very active and very, very effective. In the final analysis it is going to be up to Panama to control this degradation. Our hope would be that first they recognize the problem, and they do recognize it right now, and that they will take the action necessary to arrest it, and we have high hopes they will do so.

Mr. MURPHY. Governor, the Chair has other technical questions that we will put to you in writing for response for our record. [The questions follow:]

QUESTIONS OF COMMITTEE AND ANSWERS FROM GOVERNOR PARFITT

COMMISSION

Question 1. Will U.S. and Panamanian members of the Panama Canal Commission be subject to Federal requirements for financial disclosure?

Answer. Federal requirements for financial disclosure are contained in Public Law 95-521 (92 Stat. 1824), approved October 26, 1978. This act establishes a comprehensive financial disclosure requirement for certain covered employees and officers of the executive branch. Among these are: "Officers and employees, including special government employees, whose positions are classified at grades GS-16 and above, or at an equivalent rate under another pay schedule." Nothing in this law differentiates between U.S. and non-U.S. citizens.

Both U.S. and Panamanian employees of the Commission are considered Federal employees of the United States. Therefore, it appears that provisions of Public Law 95-521 concerning financial disclosure will apply to both U.S. and Panamanian members of the Panama Canal Commission who are compensated at a rate equivalent to GS-16 and above. On the other hand, the Department of Justice has stated that Panamanian members of the Commission's Board are not officers or employees of the United States. Thus, U.S. requirements for financial disclosure are not applicable.

Informal contact with the Office of General Counsel of the Office of Personnel Management confirms the above information.

Question 2. How will the U.S. Government deal with the problem of handling classified documents when Panamanians hold positions in the hierarchy of the Commission?

Answer. The problem of handling classified documents when Panamanians hold positions in the hierarchy of the Commission will be dealt with by:

- (a) Reducing the number of classified documents to an absolute minimum;
- (b) The use of an isolated, secure storage and processing area;
- (c) Using couriers to hand-carry classified documents to, from and between U.S. Commission officials; and,
- (d) Providing secure voice equipment in the Administrator's office.

No insurmountable difficulties are foreseen in servicing Commission officials with classified documents; the procedures which will be instituted will differ only slightly from those currently in use. Over the years, the Company/Government has acquired a great deal of experience in handling classified documents in the presence of Panamanians employed on the staff.

Question 3. Item (xiii) of paragraph 4(a) of the Panama Canal Treaty Annex precludes the Panama Canal Commission from carrying out "Educational services not for professional training, including schools and libraries." Given this prohibition, what is the future of the Canal Zone College and the Canal Zone libraries and museums?

Answer. Article XVIII of the Agreement in Implementation of Article IV of the Panama Canal Treaty permits the U.S. forces to provide education services to the Commission. Section 232, paragraph (b) of the proposed implementing legislation authorizes such agency as the President designates to conduct college activities. The Department of Defense Dependent Schools has been designated as the agency which

will continue the educational programs in the former Canal Zone and they will operate the college in the future.

With one exception, the Canal Zone libraries will close or be transferred to the Department of Defense. Paragraph 16 of the Agreed Minute to the Agreement in Implementation of Article III of the Panama Canal Treaty permits the Commission to operate the library and museum collections in the Civil Affairs Building upon entry into force of the treaty.

Question 4. Item (xii) of paragraph 4(a) of the Panama Canal Treaty Annex precludes the Panama Canal Commission from operating "Health and medical services provided to individuals, including hospitals, leprosariums, veterinary, mortuary and cemetery services." What services will be available to be utilized by Commission employees, especially U.S. citizens, upon the death of an employee or dependent? How do the services projected to be available compare with those now available?

Answer. Mortuary service is to be continued by the Department of Defense after entry into force of the treaty on October 1, 1979. The U.S. Army is responsible for planning mortuary service and no degradation of service is anticipated. Eligibility for services provided at the U.S. Army service facilities will be extended to U.S. citizen employees of the Panama Canal Commission and their dependents. Non-U.S. citizen employees of the Commission who remain under the coverage of the Federal Employee Health Benefit Program, and their dependents, will remain eligible for these services for the 30-month transition period following entry into force.

In accordance with a Reservation to the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal and the subsequent agreement reached with Panama, the American Battle Monuments Commission will administer the American sector of Corozal Cemetery, located on the Pacific side of the Isthmus. The agreement signed by representatives of the United States and Panama on January 11, 1979, provides that U.S. citizens working for the Panama Canal Commission, U.S. military personnel and U.S. citizen civilian employees of the Department of Defense, and the dependents of both groups, and certain others, may be buried in Corozal Cemetery until the year 2000. In addition, shipment to the United States of the remains of Panama Canal Commission U.S. citizen employees and those of their dependents will continue to be authorized at the Panama Canal Commission's expense.

Question 5. What will happen under the new treaty arrangement with respect to the functions now vested in the office of Canal Zone Coroner?

Answer. The Canal Zone Coroner, while closely tied in with criminal investigations is a civil function of the Canal Zone Government, which agency will be discontinued upon entry into force of the treaty. We are in the process of discussing with Panama the continued performance of Coroner type functions by the Panama Canal Commission.

EMPLOYEES

Question 1. What are the specific plans to protect rights of U.S. citizens in Panamanian courts under the new treaty, as envisaged in Annex C of the agreement in Implementation of Article III of the Treaty.

Answer. Final plans for the protection of U.S. citizens rights set forth in Annex C of the Agreement in Implementation of Article III of the Treaty have not yet been developed. It is anticipated, however, that this matter will be dealt with in treaty implementation planning discussions being held on a regular basis between representatives of the Panama Canal Company and the Republic of Panama.

Question 2. What number of employees, U.S. and Panamanian, will lose employment as a result of the treaty? How many of these are expected to be employed by other U.S. agencies on the Isthmus? How many retirements are expected?

Answer. Of the 5,776 Company/Government employees who will lose their jobs with the Canal organization as a result of the treaty, 3,229 will be transferred to Department of Defense activities (1,105 U.S. and 2,124 non-U.S.). The remaining employees (260 U.S. and 2,287 non-U.S.) will be separated from employment by reduction in force. The reduction in force actions will be partially offset by an estimated 1550 retirements occurring at the same time. Additionally, it is expected that the Government of Panama will offer employment to significant numbers of Panama Canal Company employees who now hold jobs in functions to be assumed by Panama, such as ports, railroad, and marine bunkering operations. The remaining separated employees will receive special placement assistance from U.S. Government agencies in the Canal area, as well as the Government of the Republic of Panama. Most separated employees will also receive severance pay benefits.

Question 3. What are the plans for provision of U.S. citizenship certification as will be necessary under the new treaty arrangement?
(Referred to State Department.)

FINANCES

Question 1. Article XIII, paragraph 1 of the Panama Canal Treaty requires that the Panama Canal shall be turned over to Panama "in operating condition and free of liens and debts, except as the two parties may otherwise agree."

Testimony before the Panama Canal Subcommittee in December, 1977 established that, in general, liabilities as well as assets of business entities are passed on to the new operating authority. Further, some expect that there will be a reluctance for the U.S. to invest in canal capital projects in the 1990s if full payment for the improvements must be made by the U.S. How will this issue be handled?

Are there any plans to seek implementing agreements with Panama?

Answer. Article XIII of the Treaty provides that the Canal "shall be turned over in operating condition and free of liens and debts, except as the two parties may otherwise agree". There are some capital projects which are required to maintain the Canal in operating condition, and these would be necessary in order to comply with the Treaty. This will primarily involve routine replacement of existing plant and equipment, which the Commission should be able to finance from its own resources. However, many capital projects are discretionary in nature and represent real improvements over existing plant and provide benefits over an extended period of time. To the extent that such projects cannot be financed from Commission resources, financing of major projects in the latter category in the 1990's should be subject to special arrangements. Agreements on joint governmental financing, or independent borrowing with the government of Panama as guarantor of the loan after 1999, should be arranged for such projects before they are started.

Question 2. How does the new treaty arrangement affect the capital program previously projected by the Company and Canal Zone Government? Which projects must be terminated as a result of the new arrangement?

Answer. The new treaty arrangement eliminates the Canal Zone Government and as a result there will not be a Canal Zone Government Capital Program beyond fiscal year 1979. The fiscal year 1979 budget has been scaled down to reflect only those projects that are required to maintain facilities in a satisfactory condition prior to transfer to the Republic of Panama or the Department of Defense. Any major projects initiated prior to fiscal year 1979 on facilities to be transferred to the Department of Defense will be continued in fiscal year 1979. Funding for those projects beyond fiscal year 1979 will be a responsibility of the receiving agency.

The new treaty arrangement also eliminated various Company activities and as a result, projects for those activities will not be considered beyond fiscal year 1979. These activities include operation of the railroad, ports and terminals, and all retail outlets formerly operated by the Company. Capital projects proposed for those activities in fiscal year 1979 have been eliminated or scaled back to only those projects required to maintain facilities in a satisfactory condition prior to transfer and for safe and efficient operations in fiscal year 1979.

Question 3. Should the Panama Canal Commission be allowed authority to invest their cash balances in U.S. securities?

Answer. Investment of Commission cash balances in U.S. securities or the allowance of interest credits on the Commission's cash balances on deposit in the Treasury should be considered if the Commission is to be required to pay interest on the net direct investment of the Government in the Canal.

The OMB solvency concept requires that large cash balances be maintained to cover working capital requirements and obligational needs. These cash balances are deposited largely in the U.S. Treasury and do not earn interest. From the Treasury standpoint, these cash deposits reduce the need for borrowing and thus hold down costs. From the viewpoint of the Commission and shipping, however, the retention of large non-interest bearing cash deposits, which otherwise would be applied to reduce the investment base of the Government in the Canal, and hence the interest cost charged shipping, serve to increase Commission's and, in turn, shippers costs. However, if the Commission is relieved of the requirement to pay interest to the U.S. Treasury on the net direct investment in the Canal, there is no justification for authority to invest in U.S. Government securities, or for interest credit on cash deposits.

Question 4. Please provide the latest projections of the categories and totals of Commission costs and revenues for the first 5 years of operation, and any projections for years beyond that.

Answer. In response to Question No. 2 under Finances and Accounts, there were provided preliminary projections of costs and revenues for the Commission for the first 3 years of operation. The Company is in the process of refining these estimates and will have more reliable figures available by the end of March. We have no current projections available covering Commission operations beyond the 3-year period.

TRANSITION PERIOD

Question 1. What transition expenses are to be incurred in connection with the new Treaty arrangement, including the period prior to entry into force of the treaties and the 30-month transition period?

Answer. Transition expenses in connection with the new Treaty are estimated as shown below:

[In thousands of dollars]

	1979	1980	1981	1982
Severance pay.....	4,600	.....	365	365
Inventory writeoff and moves	1,000	1,716	.....	.....
Disinterments/reinterments.....	1,703	.....	.....	.....
Plant relocations	949	972	174	.....
Repatriations.....	3,138	884	.....	1,174
Boundary surveys, mapping	306	18	.....	.....
Reproduction of drawings, property transfers.....	276	.....	.....	.....
Printing of forms and regulations.....	180	.....	.....	.....
Terminals closeout .....	.....	85	.....	.....
Temporary staffing and overtime for increased workload in personnel actions, travel orders, EEO counseling, labor relations, and employee services	484	106	.....	.....
Subtotal.....	12,636	3,781	539	1,539
Capital expenditures.....	2,078	1,135	854	2,407
Total.....	14,714	4,916	1,393	3,946

Note.—The above does not include commuted leave payments to terminated employees.

Question 2. What is considered an adequate number of police personnel for the transition period? What are the prospects for retaining an adequate number of police personnel to carry out U.S. responsibilities for criminal jurisdiction during the transition period? What should be done if there is a shortage of police personnel?

Answer. Presently the Canal Zone Police are authorized about 250-260 officers. It is felt that the Panama Canal Commission can meet its police responsibilities if about two-thirds of the present strength of the Canal Zone Police force, or some 175 officers, can be retained. Any fewer will impose difficulties with respect to the joint patrol requirements called for in the treaty.

Prospects for retaining sufficient police personnel are unclear. Facing the abolishment of their positions in early 1982, a number of officers are already seeking other federal law enforcement positions. The impact of the special placement program and the early retirement provisions of the implementing legislation could lead to a shortage of police personnel.

We are exploring various actions which could be taken to overcome a potential shortage of police.

Question 3. Who will decide for the United States questions involving jurisdiction and waiver of jurisdiction during the transition period?

(Referred to State Department.)

Question 4. What is to be done with the inmates of the Canal Zone Penitentiary whose terms of sentence will carry into the period of the new treaty arrangement? What arrangements for transfer of prisoners will be provided?

(Referred to State Department.)

Question 5. How will the Canal Protection Division relate to U.S. criminal jurisdiction functions during the transition period?

Answer. We see no significant change in Canal Protection Division operational procedures.

Instead of releasing their arrestees to the Canal Zone Police they will release them to the joint Panama Canal Commission/Guardia Nacional police patrols.

COMMISSIONERS/STOCKHOLDERS

Question 1. Why are there no provisions in the legislation for Senate nomination and confirmation of the Administrator, Deputy Administrator and board members?

Answer. It is our understanding that the bill does not include a provision for Senate confirmation of the Administrator, Deputy and Board members because some of those officials will be Panamanian nationals, for whom a confirmation requirement would appear inappropriate.

Question 2. Will provisions of the President's plans and Executive Orders to fight government corruption apply to the Panama Canal Commission? Will U.S. statutes relating to larceny, embezzlement, and improper use of funds apply to the Commission and to its U.S. and Panamanian members and employees?

Answer. The Commission will be a U.S. Government agency and, accordingly, those executive orders and plans which apply to agencies in the Executive Branch will apply to it, at least to the extent that they do not conflict with the treaty. We are not aware of any executive orders and plans dealing with government corruption which conflict with the treaty.

Criminal statutes in the Canal Zone and United States Codes relating to larceny, embezzlement and improper use of funds will apply to employees of the Commission. (The Department of Justice has stated that Panamanian members of the Commission's Board are not employees of the United States.) However, since U.S. courts here will lose primary jurisdiction over non-U.S. citizens upon entry into force, as a practical matter, those statutes will only apply to the agency's U.S. citizen employees. (While Panama could waive its primary right to exercise jurisdiction over its citizens in cases of, say, embezzlement from the Commission, we have no indication at this stage whether or not it intends to do so.)

After the 30-month transition period, Panama will acquire primary jurisdiction over U.S. citizen employees of the Commission as well. However, provision is made for waiver of that jurisdiction for, inter alia, offenses against the property of the United States in the Canal operating areas, and Panama has agreed "as a matter of general policy" to grant U.S. requests for such waivers. Prosecutions in such cases would have to occur in the United States. See paragraph 3 of Article XIX of the Agreement in Implementation of Article III of the Panama Canal Treaty and 18 U.S.C. § 3238.

Question 3. Who will make up the U.S. delegation to the Consultative Committee? What is the basis for the contemplated composition? What is the contemplated budget for the Consultative Committee? What procedures are contemplated for functioning of the Committee?

Answer. The Administration has not yet developed a final position with respect to U.S. membership on the Consultative Committee. It is our understanding, however, that active consideration is being given to designation of high-level officials from the Departments of State and Defense. The basis for such a designation would be the lead roles played by these two agencies in foreign policy and defense considerations.

Question 4. Is it contemplated that members of the board of directors of the Commission be full-time employees with comparable compensation or only part-time advisors? What is the proposed budget in the first years of Commission operation for the board and its staff?

Answer. It is contemplated that members of the board of directors of the Commission will serve as part-time advisors acting in a capacity similar to that of the existing board of the Panama Canal Company. No change has been proposed to the provision of the Canal Zone Code which prohibits the payment of a salary to members of the board and limits their compensation to a reasonable per diem allowance in lieu of subsistence expenses in connection with attendance at meetings of the board or in connection with the time spent on special service, and travel expenses to and from meetings or when on special service.

The 1980 budget that was transmitted to Congress provides for \$79,000 for Board of Directors expense. Our current projections for 1981 and 1982 are \$85,000 and \$90,000, respectively. This item of cost is not expected to change materially from the estimated cost of \$63,000 for 1979.

Question 5. Was any consideration given to making board members or the Administrator or Deputy Administrator subject to removal by the President for inefficiency, neglect or malfeasance in office?

Answer. The draft bill provides that the Administrator and Deputy hold their offices "at the pleasure of the President." In our view, those officials could be removed under that provision for inefficiency, neglect or malfeasance in office. The

bill does not provide for the removal of board members because of doubt concerning the right of the United States, under paragraph 3(b) of Article III of the treaty, to unilaterally remove Panamanian members.

Question 6. No provision in the legislation directly addresses the question of the Commissioners board operations if one or more of the seats on the board are for any reason vacant. Would language stating that the board will continue to function as long as a certain number of members are sitting be desirable?

Answer. Section 206 of the bill provides for the conduct of business by the board with a quorum consisting of fewer than all of the members present at a particular meeting. It appears questionable, however, whether paragraph 3(a) of Article III of the treaty would permit a provision allowing it to function while there are fewer than nine members currently serving on the board. If it is determined that the treaty does not prohibit such a provision, we would support its inclusion as long as it continued to preserve the requirement for a U.S. majority if the Board is to function.

Question 7. What were the reasons for establishing the Commission as a government corporation rather than an appropriated fund agency?

Answer. The basic reason is the successful record of operations enjoyed by the Panama Canal Company, a government corporation, over the past 27 years. The disciplines of the corporate organization, with its business-type budgeting and profit and loss accounting practices, the balancing of responsibility with authority, and the determination of accountability, provides the greatest assurance for efficient utilization of resources and effective performance of mission.

The appropriated fund operation emphasizes the control of and accounting for disbursements, and spending is approved, and funds provided, on the basis of plans and assumptions contemplated more than a year earlier. The ability to quickly obtain increased funding authority is limited. Also, the incentive to reduce expenditures in the face of workload reductions, is less compelling when such funds are already available, than when resource availability is tied to traffic levels. Overall, the self-policing characteristics of the corporate form of operations, related to that generally accepted measure of performance, profit or loss, provides for the most efficient utilization of resources through the ability to react promptly to changed circumstances, and the feature of accountability for performance.

The most compelling argument, however, for the corporate organizational form is in the record of performance under that organizational form achieved by the Panama Canal Company since its inception in 1950. The Company has remained fully self-sufficient financially, while paying into the Treasury some \$40 million of dividends in reduction of the net direct investment of the United States in the Canal, and paying more than \$311 million to the Treasury as interest on the net direct investment. Further, more than \$337 million of internally generated funds have been applied to capital improvements and replacements to the facilities of the Company. The corporate organizational form, with its incentives for efficiency, the balancing of authority and responsibility, and the means of determining accountability, is largely responsible for the successful record that the Panama Canal Company has provided.

FINANCES AND ACCOUNTS

Question 1. What is the purpose of discontinuing the annual payment on the investment of the U.S. in the Panama Canal enterprise?

What was the effect of the "Cannon Reservation" on the drafting of this provision of the legislation?

Why does section 201(b) continue the U.S. direct investment on the books of the Commission if the annual interest payment is to be discontinued?

Answer. The interest payment on the net direct investment was discontinued in the proposed legislation not to burden the Commission with an inordinate amount of costs which, over the long term, could threaten its ability to remain financially self-sufficient. Reservation 6 of the Panama Canal Treaty provides that the Commission shall pay interest "unless otherwise provided by legislation." The proposed bill is a recommendation to waive the interest payment by way of the legislative process and, thus, conform with Reservation 6.

The net direct investment is continued under section 201(b) of the proposed Administration's Bill to provide consistency in accounting for the equity of the U.S. Government in the Panama Canal.

Question 2. What is the current estimated magnitude of the tolls adjustment which is envisioned to be necessary upon the entry into force of the new treaty arrangement? What is the breakdown of the projected costs and revenue upon

which the estimate is based? Is the contingent payment to Panama included in the estimated costs?

Please supply the Committee with all studies projecting future tolls adjustments and the projected costs and revenues on which adjustments are based.

Answer. A rough estimate of the magnitude of the toll rate increase that will be necessary upon entry into force of the new Treaty is 14 percent. The Company is in the process of refining its cost estimates and will have more reliable figures available by the end of March. The breakdown of the projected costs and revenues upon which this estimate is based is attached (Attachment A). As indicated in the projections, the contingent payment to Panama is not included as a cost for recovery from tolls.

The Company does not have available any updated studies projecting requirements for future tolls adjustments subsequent to the initial 14 percent increase.

Attachment A—Panama Canal Commission

STATEMENT OF ESTIMATED TOLLS REQUIREMENTS—FISCAL YEARS 1980-82

[In thousands of dollars]

Activity	Fiscal year 1980	Fiscal year 1981	Fiscal year 1982
Operating expenses:			
Maintenance of channels and harbors	31,201	29,377	29,688
Navigation service and control	49,906	51,328	52,364
Locks operation	31,586	33,849	34,282
General repairs, maintenance and engineering services	921	996	960
Security and protection service	17,685	16,787	12,302
Industrial health and sanitation	2,561	2,561	2,542
General canal expense	21,252	19,666	19,518
Logistical and supply	10,559	10,678	11,471
Utilities service	22,654	22,658	22,794
Other supporting services	7,287	7,298	7,298
General and administrative	61,851	57,746	53,971
Subtotal	257,463	252,944	247,190
Payments to Panama:			
Tonnage payment	54,930	57,120	58,890
Fixed annuity	10,000	10,000	10,000
Public service	10,000	10,000	10,000
Total operating expenses	332,393	330,064	326,080
Revenues (other than tolls):			
Navigation service and control	30,814	31,182	30,997
General repairs, maintenance and engineering services	684	664	628
Security and protection service	2,488	2,488	2,461
Logistical and supply	6,106	6,341	7,198
Utilities service	25,916	26,012	26,297
Other supporting service	5,718	5,718	5,718
Others	395	329	279
Total revenues	72,121	72,734	73,578
Net operating costs recoverable from tolls	260,272	257,330	252,502
Provision for inflation (7 percent per annum)		12,615	25,156
Total operating costs recoverable from tolls	260,272	269,945	277,658
Tolls income at existing rates	227,600	236,800	244,200
Net deficiency	32,672	33,145	33,458

Question 3. The interim tolls adjustment included in section 231 of the legislation contains no specific timeframe for the estimates on which the adjustment is based. Is the interim adjustment based upon and designed to cover operating deficits for only fiscal year 1980, or does it cover periods beyond that year? Are there any other adjustments contemplated for 1980-81?

Are the projections for deficit based upon the assumption of enactment of legislation in the present proposed form?

What effect will the discontinuance or substantial reduction in Alaskan oil shipments have on these projections?

Answer. For purposes of achieving rate stability, the tolls rates to be placed in effect on the first day of the Treaty will be designed to cover operating costs over a 3-year period. If our projections of costs and revenues prove to be reasonably accurate, then the Canal should be able to maintain the new rates in effect through at least 1982. However, certain events such as the discontinuance of Alaskan oil shipments through the Canal could make another tolls rate adjustment necessary before the end of the 3-year period.

The deficit projections provided in response to preceding Question No. 2 are based upon the assumption of enactment of the Administration's Bill, H.R. 1716, in its present form.

The discontinuance of Alaskan oil shipments through the Canal starting in fiscal year 1980 would impose a requirement for a tolls increase of about 22 percent.

Question 4. Are there contemplated any transfers of funds (to cover estimated liabilities for accrued leave and/or repatriation) from the Panama Canal Company and Canal Zone Government to other Government agencies who acquire employees from the Company/Government as the result of the entry into force of the treaties?

Answer. Normally, when Government employees transfer between agencies, the gaining agency assumes the liability for the benefits earned by an employee during the period of his service with the transferring agency. In the past the canal enterprise has neither transferred funds to agencies which have gained its former employees nor received funds from other Government agencies whose employees it hired.

However, it would appear appropriate in this instance for the Canal Company to pay to the U.S. Treasury an amount equal to the value of accrued leave and repatriation rights of the employees transferring to DOD pursuant to the treaty. The rationale for this is: (a) there will be a mass transfer of canal enterprise employees to DOD agencies, and (b) if funds are not transferred to the Treasury the Company will realize a windfall gain equal to the value of the accrued leave and repatriation liabilities which it will avoid. These leave and repatriation liabilities may be regarded as liabilities incurred by the Panama Canal Company and Canal Zone Government in operating the canal and governing the Canal Zone. It is believed that making such payments accords with the principle reflected in 2 C.Z.C. § 62, that the Panama Canal Company shall finance the costs of its operations and the costs of the Canal Zone Government from canal tolls revenues.

Since there is some question as to whether or not the Panama Canal Company has legal authority to effect the indicated payments, it would appear appropriate for such action to be authorized and directed in the implementing legislation.

Question 5. What do you estimate will be the first 5-year costs of section 234 of the bill providing for adjustment of compensation for loss of benefits (such as military postal services, sales stores and exchanges) of canal employees?

Answer. The Panama Canal Company has made no detailed study on this subject. However, we estimate that under the current situation a differential of 15 percent of base pay would be required to compensate for the loss of these benefits. The average salary of U.S. citizen employees remaining with the Commission is estimated to be \$25,600 in fiscal year 1980. Escalating that at 6 percent per year would result in an average salary of \$34,258 in fiscal year 1985, the first year of the cost of living allowance. It is impossible to accurately estimate the number of U.S. employees at that time but it is safe to say that the number will not exceed 2,000. Based on these figures and the assumption that the 15 percent differential does not change, the COLA allowance would be \$10,277,400 in 1985. Increases thereafter as a consequence of inflation are likely to be offset by attrition of the workforce. On this basis and again under the assumption of no change in differential, the first five years cost would not exceed a total of \$56 million.

Question 6. What is the projected cost of the early retirement benefits proposed in the legislation? How will these costs be paid?

Answer. In response to your question of what is the projected cost of the early retirement benefits, the Panama Canal Company has never made estimates of these

costs. However, the Office of Personnel Management has recently estimated that the total additional liability would be \$205 million.

In response to your second question of how these costs would be paid, we understand that, under existing retirement law, this liability would be amortized in thirty equal annual installments of \$12.7 million each, paid out of general revenues by the U.S. Treasury. H.R. 1716 follows existing law. H.R. 111 appears to contemplate that the Commission would pay these costs from tolls over the life of the treaty. This would increase the tolls by about \$15.7 million annually.

Question 7. What are the implications of establishing the Commission as the successor agency of the Panama Canal Company?

Answer. Section 201 of the Administration's bill is designed to implement the requirements of paragraphs 3 and 10 of Article III of the Treaty. There two treaty provisions require the United States to carry out its responsibilities to manage, operate and maintain the waterway by means of a new U.S. agency, and prohibit the Company from conducting further operations in what is now the Canal Zone. The legislation makes the Commission the successor to the Company in order to insure continuity of canal operations. Another provision of the bill (section 210) provides for the assumption by the Commission of all assets of the Company not otherwise transferred, as well as all of the present agency's liabilities. We perceive no other implications.

Question 8. What will be the source of funding for the various boards, committees and commissions to be established pursuant to the Panama Canal Treaty (e.g., Panama Canal Consultative Committee, Joint Commission on the Environment)?

Answer. It is felt that the treaty envisions the Panama Canal Consultative Committee and the Joint Commission on the Environment as high level vehicles for the conduct of consultation on a government-to-government basis. Thus, it would not appear appropriate that the Panama Canal Commission be the source of funding and allowance for such has not been included in the toll base. This, of course, would not be the case with the Panama Canal Commission's board of directors where the Commission would be the source of funding for the board's travel expenses and per diem. With respect to the Coordinating Committee, we believe the Commission should be responsible for the expenses of the U.S. membership and support. We anticipate that a Commission employee will serve as U.S. representative.

Question 9. Is it contemplated that the section 203 payments to Panama would be made without funds being channeled through the U.S. Treasury? Do you not anticipate that some sort of specific appropriations enactment will be necessary before the payments may be made?

Answer. The Panama Canal Treaty provides that the payments to Panama are to be paid by the Panama Canal Commission from Canal operating revenues. This is reaffirmed in section 203. Under the Government Corporation Control Act, payments to Panama would be included in the Commission's budget proposal, which would be subject to approval by the Congress.

Question 10. According to section 203, the contingent \$10 million will be paid to Panama only after all costs of operating the Canal have been met. Should this be the case in view of the Panamanian Foreign Ministry statement of April 25 that both the fixed and contingent payments are "considered as part of the Canal's operating revenues"?

Answer. Article XIII of the Panama Canal Treaty states that the \$10 million contingent payment is " * * * to be paid out of Canal operating revenues to the extent that such revenues exceed expenditures." Section 203 is consistent with this priority as established in the Treaty.

Whether or not this contingent payment is made will depend largely upon whether or not it is included in the cost base upon which toll rates are established. Understanding No. 3 to the Panama Canal Treaty states, in part that " * * * toll rates established pursuant to paragraph 2(d) of Article III need not be set at levels designed to produce revenues to cover the payment to the Republic of Panama described in paragraph 4(c) of Article XIII." The proposed toll base in section 232 of the Administration's Bill is consistent with Treaty Understanding No. 3 in that the contingent payment is not included as an element for inclusion in the cost base for setting tolls.

Question 11. Is there any intention in the legislation to preclude amounts owed by Panama to the Panama Canal Commission from being offset against the payments to Panama under Articles III and XIII?

Answer. No. The legislation does not preclude the use of an offset procedure to effect collection of amounts due. We are seeking to conclude a formal agreement for the use of this mechanism.

Question 12. Is it correct that the present \$8 million due to the Panama Canal Company in delinquent accounts receivable from the Government of Panama will be assumed by the Panama Canal Commission pursuant to section 201?

Answer. Yes, it is correct that the accounts receivable from the Government of Panama will be transferred to the new Commission. Panama has indicated a willingness to pay these receivables over a 3-year period starting the next month or so. We are presently involved in formalizing an agreement with them for such a payment plan.

Question 13. What measure is the Commission expected to take to verify the costs of public services provided by Panama under Article II, paragraph 5 of the Treaty?

Answer. The Commission will seek to establish an operating procedure which clearly stipulates levels and quality of services to be performed; the method by which services will be monitored and certified as to acceptability; and agreement as to what costs can be included in billings for such services, and the frequency of billings. Costs incurred by Panama will be subject to a mutually binding audit, and payments during the second 3-year period will be adjusted upward or downward to reflect actual cost experience during the first 3 years.

Question 14. Has any consideration been given to provision for judicial review of decisions on tolls adjustment and measurement rule changes?

Answer. It is our understanding that a tolls adjustment or measurement rule change would be subject to judicial review in accordance with Chapter 7 of Title 5 of the U.S. Code, by virtue of the language of that statute. We see nothing in the U.S. Supreme Court's decision in *Panama Canal Company v Grace Line*, 356 U.S. 318 (1958), which would negate that conclusion since that action involved only the question of whether the Panama Canal Company could be judicially required to initiate a proceeding to decrease tolls. The Court there stated, at 317 that—

“* * * We do not say, for we are not called upon to do so, that no justiciable issues can arise out of the toll-making procedure for the Panama Canal. All we hold is that the controversy at present is not one appropriate for judicial action.”

Moreover, the Court's reliance on the section 10 of Administrative Procedure Act (now 5 U.S.C. § 701) in reaching its decision in the case, would indicate that it considered that Chapter 7 of 5 U.S.C. would govern in a proceeding to judicially review a tolls increase. In view of the foregoing, it is our opinion that no provision in the implementing legislation is required to subject tolls increases or measurement rules changes by the Commission to judicial scrutiny.

Question 15. There appears to be no language in the legislation built upon the Panama Canal Treaty's “Long Reservation,” which requires that certain factors be taken into account in the determination of toll rates. Please explain why no legislative language is directed to this issue?

Answer. Section 232(c) of the bill would amend the current 2 CZC § 412(d) to provide that the levy of tolls will be subject, inter alia, to Article III of the Treaty Concerning the Permanent Neutrality and Operation of the Panama Canal. Since the so-called “Long Reservation” (actually Understanding (1) to the resolution of ratification of that treaty) provides a construction of paragraph 1(c) of Article III, it is considered that reference to the article is, as a legal matter, a reference to the article as construed in the understanding.

We note that this same approach seems to have been followed in section 412(d) of P.R. 111.

Question 16. What is the basis for the amortization of use rights authorized by section 210?

Answer. Amortization of use rights for assets transferred to Panama is included as a cost to recognize the benefits that accrue to the Commission from their use. It is anticipated that the amortization charge for assets utilized would be equal to what the depreciation would have been if ownership of the asset had been retained by the Commission.

Question 17. Does the provision of section 212 dealing with appropriations of U.S. agencies for health care services for elderly and disabled persons contemplate that the Panama Canal Commission would reimburse for such services?

Answer. It is anticipated that the Panama Canal Commission would provide reimbursements for health care services provided to its former employees to the extent that the cost of the service exceeds amounts paid by the person served. These former employees are primarily disability-relief recipients and Civil Service annuitants retired prior to 1970. In addition, reimbursements are anticipated for health services provided to certain elderly persons receiving domiciliary care at Corozal Hospital.

Question 18. If increases in rates of tolls are contemplated to take place no more than once a year, is there any need to reduce the period of proposed changes from 6 to 3 months, as is provided by section 230?

What is your estimate of how frequently changes in tolls will be necessary? Answer. There is a need to compress the waiting period between the announcement of a proposed toll rate increase and the effective date for implementation, since the Commission will not have the flexibility of the Company to preserve its cash resources during deficit years by withholding certain payments from the Treasury until subsequently earned. For operation under the Treaty, the Commission must continually assess the adequacy of tolls, and when determined to be inadequate, be capable of implementing a rate increase in sufficient time to cover current fiscal period costs. The prospect of a toll rate being adequate to cover all contingencies is less than certain. Canal closures because of slides or marine accidents are an ever-present threat; traffic levels and related income fluctuate; and cost escalations can be alarmingly severe and unexpected.

Question 19. Need the Panama Canal Treaty of 1977 be included as a reference in the amended version of subsection (d) of section 412 of Title 2 of the Canal Code relating to the levy of tolls under various treaties?

Answer. Such a reference need not be included. Section 412(a) would be amended by the bill to (a) substitute the nondiscriminatory requirement for the levy of tolls contained in the Neutrality Treaty for that now contained in the 1903 Treaty; and (b) withdraw Panama's right, also contained in the 1903 Treaty, to tolls-free transits for certain of its vessels.

Question 20. If assistance is provided to Panama under Article X, paragraph 8 of the Panama Canal Treaty, how would the U.S. Government provide such assistance and who would pay the cost? Would this be a cost to the Commission? Would assigned employees continue to be under the Panama Canal Employment System?

Answer. If assistance is provided to Panama in operations of activities transferred to them by the Treaty, it is anticipated that the Commission would detail employees to work in these Panamanian-owned activities. These persons would be Commission employees in every respect and would be covered by the Panama Canal Employment System. The cost would be fully recovered by reimbursements from the Panamanian operating agency.

CLAIMS

Question 1. In general, what is the purpose of the inclusion in the implementing legislation of substantive amendments on claims payment and procedures? More specifically, why are the provisions of section 260(e) included in light of the general principles of maritime law?

Answer. Under present law, the Company is a virtual insurer for accidents occurring in the locks of the Panama Canal. The bill would amend 2 CZC 291 to require a showing of negligence in locks cases. Since U.S. courts here will lose jurisdiction over new civil actions after October 1, 1979, it is necessary to amend 2 CZC 296 to establish jurisdiction in a U.S. District Court in the United States. For this same reason, it was thought prudent to establish a statute of limitations, similar to that contained in the Federal Tort Claims Act, which will reduce the number of actions that have to be filed on claims under negotiation.

With regard to the question concerning section 260(e) of the bill, it would revise 2 CZC 293, dealing with the types of damages recoverable from the Commission in vessel accident claims, to confirm the long-standing administrative construction of those damage provisions, that was affected by a court decision in 1973 concerning liability for charter hire, expenses for maintenance of the vessel, and wages of the crew, for the time the vessel is undergoing repairs. Subsection (b) of section 293 would be amended specifically to cover other questions that have arisen with reference to general average expenses, attorneys' fees, bank commission and port charges.

Question 2. Has any consideration been given to limiting or eliminating payment of claims for vessel damage? What would be the effect of such a provision on canal operation and/or on the canal users?

Studies performed over the years indicated that eliminating liability for vessel accidents would not be in the best interest of the Canal agency. See, e.g., report entitled "Liability of the Panama Canal Company for Vessel Accident," prepared in 1972 by former corporate secretary W. M. Whitman, a copy of which will be provided to the Committee upon request.

NAVIGATIONAL RULES

Question 1. What would be the specific nature and uses of the regulatory authority for navigational rules authorized by section 211? To what extent may the Commission act to establish such rules unimpeded by Panama?

Answer. It is contemplated that the rules which are adopted would be substantially the same as those currently governing navigation in Canal Zone waters. See parts 101 through 117 and 123 of Title 35, Code of Federal Regulations. Once adopted, these rules would be used, as are the current regulations, to insure that vessels are properly manned and equipped for transit, to prevent accidents in the waterway, and to determine fault in those cases where accidents do occur.

The United States is specifically authorized, under paragraph 2(c) of Article III of the treaty, unilaterally to establish "all rules pertaining to the passage of vessels through the Canal and other rules with respect to navigation and maritime matters. * * *" Article IX(8) prohibits Panama from enforcing any provision of its law which interferes with the exercise by the United States of rights granted to it by the Treaty.

PHASEOUT OF JURISDICTION

Question 1. Why is the authority for U.S. administration of the transition period vested in the Administrator rather than another office or institution?

Answer. If this question can be read to refer to the vesting in the Commission of "any authority necessary to the exercise during the transition period of the rights and responsibilities of the United States specified in Article XI" of the treaty (see section 409 of the bill), then it would appear that the vesting of the authority in the Commission was contemplated by paragraphs 2(f) and (g) and 3 of Article III of the treaty.

Question 2. Is there any need for the name of the Canal Zone Code to be changed to the "Panama Canal Code"?

Answer. We are aware of no legal requirement for changing the name of the code. As the treaty effectively disestablishes the Canal Zone, a change in the code name would be a nod to Panama's sensitivity and would also avoid a misnomer.

FORM OF AGENCY

Question 1. Why are no formal structures or specified duties and procedures provided, but only Presidential appointment authority cited with respect to the Panama Canal Consultative Committee, the Joint Commission on the Environment and the sea-level canal study commission?

Answer. It is our understanding that the Administration has not yet developed a final position regarding the structures, duties and procedures of these groups.

Question 2. Why was the eastern judicial district of Louisiana chosen as the legal residence for the Commission for the purposes of federal laws relating to jurisdiction or venue in civil actions?

Answer. The Eastern District of Louisiana was selected as the appropriate jurisdiction for the adjudication of vessel accident claims (see section 260(g) of the bill) because the Federal bench there is experienced in admiralty litigation. Since it is also relatively close to the Isthmus, and since the commission will have an office in New Orleans, it seemed to be an obvious choice in which to establish the Canal agency's legal residence as well. (See section 201(a) of the bill.) It should be noted that, as is the case at present, the agency would also be a resident of the District of Columbia.

EMPLOYEES

Question 1. Provisions of the Panama Canal Treaty and related agreements do not specifically state that U.S. citizen employees of the Panama Canal Commission and their dependents shall pay U.S. Federal taxes. Is there any intention to exempt these persons from U.S. income or other taxes?

Answer. We are not aware of any intention to exempt U.S. citizen employees of the Commission, or their dependents, from U.S. taxes. The Department of Justice has specifically stated that they are subject to Federal income tax.

Question 2. What numbers of employees do you expect will separate from the Canal organization upon entry into force of the treaty arrangement, if early retirement benefits are provided through legislation? If such benefits were not provided, would the number of those who wish to separate be significantly different?

Answer. Effective October 1, 1979, approximately 2,600 employees in the Canal organization will have to be separated by reduction in force due to abolishment of positions. The 1,550 retirements we estimate will occur in 1979, will help to reduce the impact of this reduction. This retirement estimate is based on the assumption

that the early retirement option provided in the proposed treaty legislation will be approved.

Pending approval of the treaty legislation, the Office of Personnel Management authorized a major RIF retirement option for Company/Government employees during the period April 1 to September 30, 1979. If the early retirement option proposed in the legislation is not approved, the number of employees who choose to retire early is not expected to be significantly different, since most employees who might choose to retire under the early retirement option could also do so under the major RIF option. In fact, it is probable that more employees might choose to retire in 1979 if the early retirement option were not approved, since employees would be forced to exercise the major RIF option by September 30, 1979. On the other hand, the retirement option provided for in the draft treaty legislation can be exercised at any time during the life of the treaty and contains the additional retention incentive of a more favorable annuity computation for all service after the effective date of the treaty.

Question 3. After the initial set of separations, how close will the Commission be to the reduced number of U.S. citizen employees that will be required as a result of paragraph 3(c) of Article X of the Panama Canal Treaty?

Answer. It is estimated that approximately 300 positions in the Panama Canal Company which are presently occupied by U.S. citizens will be either abolished or transferred to the Department of Defense upon entry into force of the treaty.

Based on these figures, there could be an immediate 14 percent reduction toward the 20 percent reduction required by paragraph 3(c) of Article X of the treaty. However, this figure must be viewed as a rough estimate because it can be affected by a number of variables, including the following:

(a) Under reduction-in-force procedures, U.S. citizen incumbents of positions to be abolished could be entitled to "bump" into other positions which will be retained by the Commission.

(b) U.S. citizen employees of the Canal Zone Government in positions being retained by the Panama Canal Commission may have been previously employed at some time by the Panama Canal Company and would, therefore, have to be counted as "United States nationals employed by the Panama Canal Commission who were previously employed by the Panama Canal Company" for purposes of measuring the required reduction.

(c) Additional numbers of U.S. citizen employees of the Panama Canal Company might choose to retire voluntarily.

Question 4. Do you anticipate that there will be a shortage of any of the skills important to the operation of the canal after the separation of those employees eligible for early retirement?

Answer. It is not known how many employees in certain skills important to the operation of the canal (for example, pilots, towboat masters and machinists) will take advantage of the early retirement option. However, no critical shortage is anticipated in these occupations.

Of these particular occupations, only pilots are eligible for retirement in significant numbers under the early retirement option. However, responses to a treaty-related questionnaire sent to all Company/Government employees in October 1978 revealed that of the Canal pilots who responded, only six would retire in 1979. Because of the many variables to be considered, it is difficult to assess the validity of the responses given to the questionnaire. Nevertheless, the results lead us to the conclusion that no critical shortages will occur. Whereas it must be expected that a number of employees important to the Canal operation will exercise the option to retire in 1979, it is anticipated that the more favorable annuity computation formula provided for in the treaty legislation and the right to exercise the retirement option throughout the life of the treaty will serve to induce employees to continue in employment after the treaty effective date.

Question 5. Section 149, Title 2 of the Canal Zone Code states that the present Canal Zone Merit System shall, among other things, "be based solely on the merit of the employee or individual and upon his qualifications and fitness to hold the position concerned * * *". The language of the amendment contained in section 307 of the legislation repeats the above language, but qualifies it by providing for exceptions based on the Panama Canal Treaty. What are these exceptions or modifications? Do they change fundamentally the merit prescription in present law?

Answer. The principal exception to the present Canal Zone Merit System will pertain to the establishment of a system of hiring preference for Panamanians.

The treaty provides that in its employment and labor regulations, the Panama Canal Commission " * * * shall establish a system of preference when hiring em-

ployees, for Panamanian applicants possessing the skills and qualifications required for employment by the Panama Canal Commission."

Exactly what method will be used to give such preference to Panamanians has not yet been determined, however, any system established will be compatible with a merit selection system and take into account the requirements for veterans preference. Preference for Panamanians does not change the merit prescription in the present law, but is a limitation on it similar to that resulting from veterans preference.

PANAMA

Question 1. What progress has Panama made with respect to the legislation it will need to meet its obligations under the new treaty arrangement? What material is now available for review. When will the rest be available.

Answer. Panama has enacted a statute establishing the Panama Canal Authority as the entity of the Panamanian Government responsible for treaty implementation. We are not aware of any other legislation enacted by Panama.

Mr. MURPHY. Are there other questions?

Mr. EVANS. Mr. Chairman?

Mr. MURPHY. Mr. Evans?

Mr. EVANS. One more question: I should have asked what provision is made for the medical care of the Americans?

Governor PARFITT. The responsibility for the hospitals will transfer to the Department of Defense by terms of the bills. And the Department of Defense will afford that hospital care.

Mr. CARNEY. Mr. Chairman?

Mr. MURPHY. Mr. Carney.

Mr. CARNEY. Along those lines, if responsibility does transfer to DOD where does the cost transfer to?

Governor PARFITT. DOD will have to, in their budget, include the cost of operation, and they will in turn pass to the Commission the cost of providing their employees with health care. We in turn will participate in health care plans, so the commission will make contributions to the health care plan. The employee will contribute and the Commission will contribute, and the insurer will pay DOD and reimburse them for the cost of our employees.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. One brief question, Mr. Chairman.

Governor, in the discussion on additional budgetary restraints as included in H.R. 111 versus the administration bill, which seems to be one of the critical things we are dealing with, at least in this committee, you make the argument for flexibility which I think has merit.

How would you answer those people who would say that between, as I was informed by staff, 1912 to 1950, that the appropriated process was used and it worked relatively well, and I guess it was something like six supplementals that were requested in the time period to take care of the flexibility situation.

Governor PARFITT. I would answer that by saying that although it worked relatively well there are those that felt it didn't work well enough. Thus the concept was expounded, that it more properly ought to operate under the corporate form, and the thinking within the Congress and within the administration was to that effect. So it was felt then and is felt now that more effective control can be provided with the corporate type of operation.

Mr. MURPHY. Other questions?

Mr. BAUMAN. Can I ask you for a candid answer to the question or the statement that I alluded to in my opening remarks about

costing the American taxpayers and you mention that interest, amortization, and early retirement costs probably should not be included in the tolls.

You just mentioned the cost of the Department of Defense, the effective amount for DOD costs annually for the life of the treaty is \$60 million plus, I think sticks in the back of my mind.

Your whole statement, not your statement, sir, but all of the testimony we have heard, is placing the committee in a box of being the one to decide whether or not the taxpayers pay or the tolls have to bear this, with the attendant loss of transit.

You are suggesting the taxpayers are not going to have to pay one dollar additional but maybe billions if it is not taken out of the tolls, and you have advised us not to put certain things in the tolls.

Am I misreading that?

Governor PARFITT. Well, yes; I have indicated the level of tolls which I think is possible without diminution of traffic and, as you noted, there are some additional costs which can be accommodated. How much you then load into the tolls is a national policy question—how much money does the United States feel appropriately they should recover.

Mr. BAUMAN. But the national policy question, we were informed, was determined by the terms of the treaty and there would be no extra costs, and now we are told indeed to continue efficient operations at low enough tolls there would be substantial costs.

Governor PARFITT. I have consistently stated there are costs to the U.S. taxpayer as a consequence of the treaty, and I have also testified that the treaty does not contemplate, however, that any of those costs include payments to Panama. The payments to Panama are to come from revenues from the tolls.

Certainly, if you load an inordinate amount of costs to flow into the U.S. Government you could get to the point where the system will not generate those kinds of revenues. And if you get to that point then I have always maintained that the United States is the ultimate guarantor of the payments and, in the final analysis, the United States would have to pay.

Mr. BAUMAN. One last question: Do you have any estimate if the optimum condition prevails in this legislation as far as employees' rights, early retirements, benefits, inflation, mechanisms to cover their costs of lost PX privileges, if the optimum condition prevails in this legislation you would like to see, still what attrition will occur and what effect will this have on the operation of the Canal if the best possible case is adopted?

How many people are we going to lose and what will this do to the operation of the canal?

Governor PARFITT. I don't have any precise number, but I feel confident if the legislation passes in its current form that we will maintain all of the critical people that we need to operate the canal initially.

The question of whether they will remain and how long they will remain would depend on how skillfully we conduct the transition. But I am confident in my own mind that the initial status will be satisfactory and we will be able to continue to function effectively as we have in the past.

Mr. MURPHY. Thank you very much, Governor. [Applause.]

We will have a panel of civic council representatives; Mr. Georges Bouché; Dr. Richard Cheville; Mr. James Wheeler, and Mrs. Patricia Munchbach, and they will be seated after the break.

We will break for about 10 minutes.

[A short recess was taken.]

Mr. MURPHY. The committee will come to order.

I don't know how long the statements of each of the persons testifying will be. I would ask that all statements be submitted in their totality for the record at this point, and we will start with Mr. Bouché and have him make the presentation, and then we will go into the questioning.

STATEMENTS OF R. GEORGES BOUCHE, FIRST VICE PRESIDENT, PACIFIC CIVIC COUNCIL; DR. RICHARD CHEVILLE, PRESIDENT, PACIFIC CIVIC COUNCIL; JAMES WHEELER, REPRESENTATIVE, PACIFIC CIVIC COUNCIL; PATRICIA MUNCHBACH, PRESIDENT, GAMBOA CIVIC COUNCIL

Mr. BOUCHÉ. I am prepared to give testimony on a joint statement for all of the civic councils on the Pacific side.

There will be one statement, sir.

Mr. Chairman, gentlemen, my name is Georges Bouché, and sitting with me are, Dr. Richard Cheville, Mrs. Patricia Munchbach, and James Wheeler.

We represent the U.S. Civic Councils in the Pacific Area. These Councils consist of democratically elected members of five town sites and represent a good cross-section of the community.

We appreciate this opportunity to address you on matters regarding the Panama Canal, as this is of tremendous personal concern to every member of our community.

Canal Zone residents dislike the treaties and the threat we feel it creates to efficient operation of the canal. However, now that we are about to have these treaties imposed upon us as an accomplished fact, we are anxious to see them enter into force with as little disruption of our waterway as possible.

We also believe the Congress is interested in the continued efficient operation of the Panama Canal. That efficient operation depends on the retention of a skilled and motivated work force to pilot the ships, operate the Locks, and dredge the channels.

President Royo has publicly stated on several occasions that retention of the skilled U.S. citizen work force is essential not only for the continued operation of the waterway, but to train the Panamanian citizens who will increasingly participate in the operation of the canal through the life of the treaty.

The retention of an adequate number of U.S. citizen employees depends on many things: The goodwill of the Government of Panama, sympathetic and ethical handling of transferred employees by Department of Defense Schools and Army Health Services Command; composition of the Commission, and the job market in the United States. But more than any other factor, it depends on the benefits the enabling legislation provides to the employee in return for living and working in Panama under the new treaty arrangement.

Article X of paragraph 2(b) of the Panama Canal Treaty states: "The terms and conditions of employment to be established will in

general be no less favorable to persons already employed * * * ." In fact, because of the treaties, our employment conditions have already begun to deteriorate and, regardless of the legislation you enact, will deteriorate further during the coming years.

The treaty mandates that Panamanian citizens be hired preferentially, so many U.S. citizens will enter the treaty period at the highest grade and position they can ever hope to attain. Department of Defense transfer of function employees are losing leave benefits and education transportation for their college-age dependents. We will pay increased insurance rates for automobiles and customs duty on orders shipped from the United States.

Employee-member financed and constructed churches, fraternal organizations and clubs, which are a part of the fabric and quality of any community life, will continue to function only by yearly permission of the Panamanian Government. We would like their continuance assured. But, most important of all, we will no longer live under the guarantees of the U.S. Constitution. All of these things effectively contribute to the degradation of the conditions of our employment.

The labor representatives will present testimony regarding employee benefits to be addressed by the treaty implementing legislation. The Pacific Civic Council believes congressional enactment of employment benefits requested by these labor leaders is basic to retention of the work force needed to keep the canal in operation. It is essential that the legislation be debated and passed quickly by the Congress, because after the years of uncertainty associated with the treaty negotiations and ratification delay alone will have a further adverse effect on retention of needed employees and operation of the waterway.

Perhaps you will hear other testimony stating there is no need to include the employee benefits in the enabling legislation because, no matter how much they complain, the employees will remain and operate the canal.

A recent article in the Miami Herald noted that few Panama Canal employees have resigned since the treaty was ratified. That is true, but the reason is simple. Everyone is waiting to see what will be contained in the implementing legislation. The decision to remain and work or return to the States will be determined largely by the legislation you enact.

Title 7, section 503(b), of the administration bill entitled "Effective Date", indicated nine sections of the act will become effective upon the date of enactment of this act. We believe that this section should be altered to read: "Shall become effective on October 1, 1979, or on the date of enactment of this Act, whichever comes first." This alteration will safeguard employee benefits in the event passage of legislation is delayed.

Title III, chapter 1, section 305 of the proposed implementing legislation enables Federal agencies in Panama to pay recruitment and retention differentials to certain essential employees. Many of the employees essential to the operation of the canal who would be covered in this section of the legislation are difficult to recruit and retain and are already at or near the Federal pay ceiling. Therefore, this section of the legislation would be meaningless unless the

additional remuneration prescribed was specifically excepted from the Federal ceiling in the legislation.

Section 407(b) of proposed implementing legislation would permit that at any time in the transition period:

* * * one or both of the Magistrates' Courts * * * may be abolished by the President or his designee if in his judgment the workload is insufficient to warrant continuance * * *

Section 407(c) would provide:

If both Magistrates' Courts are abolished * * *

The District Court should exercise the jurisdiction of the Magistrates' Court * * * and

The requirement of and procedures for preliminary examination * * * shall not apply."

At first glance the interests of the U.S. citizen seem to be taken care of. But a second look shows unmistakably that with the disappearance of the magistrates' courts, two highly undesirable circumstances may be forced upon the citizens of the Canal Zone earlier than the treaty requires.

First, any practical right of appeal is lost. Of course, it will be possible to appeal from district court to the fifth court in New Orleans but at such an expense in time, money, and effort as to render any right of appeal in a small matter essentially worthless.

Second, the right to preliminary examination and a possible finding of no probable cause before trial in the district court is lost. Preliminary examination as currently provided is a proceeding in the nature of grand jury indictment, is substantially important under the American system of justice, and should be continued.

Accordingly, we recommend strongly that 407(b) be changed from "one or both" to "one but not both" in its second line; to delete "either or" in its sixth line, and to delete 407(c) in its entirety.

The Canal Zone College is a 45-year-old institution, incidentally, of which I am a graduate, and you won't find that in your text, and a symbol of pride and excellence for citizens in the Canal Zone, providing them with educational facilities for their children and continued education for themselves.

Residents of the Canal Zone have been promised retention of quality education and the Honorable Ambler H. Moss, U.S. Ambassador to Panama, stated: "Anything the U.S. Government can do to maintain a high quality of education is essential for the morale of the American community and ought to be supported. We should not be penny-pinching in this respect."

Residents of the Canal Zone have become gravely concerned over attempts by Representatives from Florida to abolish the Canal Zone College and offer an extension of Florida State University as its replacement. There is no reason to believe that an extension of another institution could offer the same kinds of services and program quality at less than current operating costs.

In addition to providing the services to the Canal Zone community, the college is an outpost in the middle of Latin America promoting the American ideals of democracy, civil liberties, and human rights.

We therefore ask your committee to support in any implementing legislation a section which enables the Canal Zone Community

College to continue to function after the transfer of the schools to the Department of Defense.

During his term as Governor of the Canal Zone, Harold R. Parfitt has acted as an effective and sympathetic advocate of the Canal Zone community in regard to the Panama Canal treaty. His term as Governor will end on October 1, 1979, leaving no one to represent the Canal Zone community during the crucial transition period. At the time the treaty goes into force, employees of the Panama Canal Company and the Canal Zone Government will be transferred to different Federal agencies.

Many will be absorbed by the new Panama Canal Commission which is still in its gestation period. Others will transfer to the Department of Defense schools and the U.S. Army's Health Services Command. Many decisions vitally affecting employees will be determined during the transition period by administrative interpretation of the treaty and the enabling legislation.

The Pacific Civic Council, including the Gamboa Civic Council, asks that a position of ombudsman be created by the enabling legislation. The ombudsman should be empowered to act as an autonomous advocate for the employee during the formative stage of the Panama Canal Commission and during the months immediately following transfer to other Federal agencies. The ombudsman's office should remain in operation from October 1, 1979 until the end of the 30-month transition period.

Don't let the fact that few employees have left the Canal Zone during the last year mislead you. A large percentage of the employees were born and raised in the Canal Zone or have lived in the Canal Zone for so long that this is their home.

They would like to remain here if given reasonable incentives to compensate for the involuntary changes in their lives. However, these same employees are already looking into the availability of jobs in the United States. They are awaiting the implementing legislation, the end of the present school year, and the opening of Federal positions within the United States after the lifting of the present Federal employment freeze.

The only possibility of retaining the necessary work force to maintain efficient operation of the Panama Canal is rapid passage of implementing legislation containing sufficient incentives for the employees.

That concludes our statement, Mr. Chairman.

I would like to ask you a question: Will the tapes that are being made of this hearing be available to the individuals participating and that are present today?

Mr. MURPHY. Yes; I have spoken to the technical people and, at no cost to the committee, the people are willing to furnish their own tapes in exchange for a set of their tapes. That is perfectly agreeable to the committee.

Mr. BOUCHÉ. We appreciate that. We would be pleased to try and answer any questions you gentlemen might have.

Mr. MURPHY. As far as the constitutional guarantees are concerned, both H.R. 111 and H.R. 1716 keep in effect for the 30-month period the guarantees under Title I of the Canal Zone Code.

I think a 2½-year period will certainly serve as an indicator as to the attitudes of the Panamanian Government with respect to

the constitutional guarantees and what the American worker certainly does expect. But after that 30-month period title I will not be in effect.

With respect to the ombudsman, would you expect that ombudsman to be within the framework of the Panama Canal Commission?

Mr. BOUCHÉ. I would expect the ombudsman to be an autonomous advocate. When the last group of Congressmen were here they suggested it might be an extension of some office within the State Department, and I don't believe the people in the Canal Zone would appreciate that. He must be separate and distinct. He could be located within the Commission enterprise and be available to the community at large.

Did I answer your question properly?

Mr. MURPHY. I think so. On the question of holding dual nationality, that has become a focal point. Have you had any clarification on that problem?

Mr. BOUCHÉ. No, sir. I might say that I am in that category.

Mr. MURPHY. Is it clear to you that you would be treated as a U.S. citizen if you so elected?

Mr. BOUCHÉ. Yes, sir; it is.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. Thank you, Mr. Chairman.

On page 2 of your statement, that paragraph title 3, section 305 where you mention that many of the employees essential to the operation of the canal who would be covered in this section of the legislation are difficult to recruit and retain and are already at or near the Federal pay ceiling.

Do you want to elaborate on that and tell us who we are talking about?

Mr. BOUCHÉ. Sir, I am an engineer.

Mr. BONIOR. Or anybody on the panel?

Mr. BOUCHÉ. I would like to defer to Dr. Cheville.

Dr. CHEVILLE. Congressman Bonior, certain categories of important people, for example, Panama Canal pilots, at the present time are at or near the Federal ceiling. In fact, a number of the pilots for overtime work they do in taking ships through the canal do not receive at the present time full payment for the work because overtime takes them beyond payment for the Federal ceiling, and they receive in their paychecks a notice that they cannot be paid for all their work.

Pilots, I think, would be the prime example. There are others, physicians, and several other categories who are essential at administrative levels or in the waterway who, even though retention benefits were added, would not be able to receive them unless they were excepted from the ceiling. The bill would be an empty gesture toward retaining crucial personnel.

Mr. BONIOR. What is the ceiling for pilots?

Dr. CHEVILLE. To my knowledge it's the same as it is for any Federal employment at \$47,500 per year. I might add that the former president of the Pilots Association went to the United States last year to recruit more pilots and was offered a job at considerably more than his salary here and although he had gone

to recruit pilots himself was recruited to move to the United States.

Mr. BONIOR. That answered my second question.

What are you recommending in terms of ceilings?

Dr. CHEVILLE. I don't know what the ceiling would be, but again I will stick to pilots.

Mr. BONIOR. But \$47,000 seems to be an awful lot of money to me.

Dr. CHEVILLE. It seems an awful lot of money unless you run short of pilots to run the Panama Canal operation, at which time everything else stops. If you don't have pilots to take ships through and if the wages that are offered are not competitive with being captain of a ship in international maritime commerce or a pilot in the St. Lawrence Seaway or other places, then you have difficulties.

Mr. BONIOR. I have no further questions, Mr. Chairman.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. I asked the Governor the same question, but I would like to ask the panel if the optimum condition does apply and the rights are protected to the fullest extent in this legislation?

Will there be any serious disruption of the canal as a result of employees leaving, do you believe?

Mr. BOUCHÉ. I will answer that, Mr. Bauman.

I believe that the present state of employee thinking is that we are going to wait and see what is going to happen in the legislation. We have been promised certain things. People are simply just going to wait and see, and then they are going to take the best action they can with regard to their employment and the future of their families.

I would like to add at this point, if I might have a moment, that I hope everyone realizes the difference between the elimination of the Canal Zone and a base closing involving Federal employees at an overseas base, let's say, Turkey.

Now, we are living in a quasi-state situation. I am sure Dr. Evans recognizes this better than most of the members of the panel. We are almost a territory here in everything but name, and as such we live under full constitutional guarantees, rights and privileges as do all of the employees in the company.

This is one of the situations which has led to the remarkable state of the stability and the quality of the work force in the Panama Canal Zone, the fact that these conditions do exist in the Canal Zone.

Let's face it, we are almost a state except that the Federal Government owns all of the land and we are restricted somewhat in owning property, and starting a business of our own in the Canal Zone. People are worried about losing these constitutional privileges. They have been taken from them involuntarily by the treaty. Their major concern is that we are not going to have a Federal employee police force.

We have all lived here long enough and formed our own opinions about the quality of our police force. It is a splendid police force. We also formed our opinions about the police force in Panama, and I think that is enough said about that.

I just want to make the point that there is a substantial difference and that has contributed to the stability of this operation and it is now going to create to the instability of the operation.

Mr. BONIOR. Are you saying then regardless of the rights accrued under this legislation the protection provided as far as retirement and financial benefits, the ultimate test will be the attitude of the Government of Panama rather than anything you can write into law?

Mr. BOUCHÉ. Yes, sir. I quite agree with that. That was my personal opinion. I am not sure I speak for my community entirely, but I believe I do.

Mr. BONIOR. Well, when I was down here a year ago, a little more than a year ago, I had at my disposal a file folder full of press accounts from the local press of instances regarding the Guardia Nacional and American citizens or zonians and arrests or detentions, traffic incidents that turned into major confrontations.

Now, admittedly in the last 6 months there has been a noticeable change in attitude. Am I correct in that estimate, at least the attitude on the part of the Panamanian Government?

Mr. BOUCHÉ. There has been an attempt, yes, sir. I can only give you my opinion.

Mr. BONIOR. That's what I am asking for.

Mr. BOUCHÉ. And I can say I have to wait and see because of the previous years that I have lived here I cannot believe there is going to be such a sustained turnaround in the attitude. That is my personal view.

Mr. BONIOR. But there has been such a change, would you say?

Mr. BOUCHÉ. Yes, sir, to a degree, yes.

Mr. BONIOR. And so ultimately no matter what we do in the legislation that is going to determine whether the canal operates efficiently, is it not?

Mr. BOUCHÉ. Yes, sir. Dr. Cheville would like to comment.

Dr. CHEVILLE. Yes; I would like to speak and I again will give you my personal view because I am not sure I can speak for anybody else.

Let's take the early employment clause. I like it here, and I would choose to stay and work under the Treaty. If there were no, let's call it an escape clause for early retirement and if conditions farther along, 4 or 5 years down the road, don't turn out to be as I hope they will be, I would like to feel that I have not wasted 5 years when I would have been available to find another job and work in the United States.

So that I look upon the early retirement clause as something like a net under a circus performer. You are willing to try something, and if you fail or it does not work out you have a net under you to catch you. If that net is not there, I may well determine that I would rather not risk having to stay here until full retirement age.

If conditions stay well with the Government in Panama, the Commission, the Department of Defense, all of the new agencies that will impinge on my life, then I will choose to stay. If it does not work out I would like to feel that I have an escape hatch.

Mr. BONIOR. Governor Parfitt alluded to the fact that certain of the functions that the treaty contemplated transferring to the Government of Panama on the effective date are now in the negotia-

tion stages for the U.S. Government to provide the employees and to take care of those provisions, indicating for one reason or another the Government of Panama is not capable of providing, carrying out the Treaty terms.

It may be an unfair question, but do you have any general attitude, opinion about whether or not on October 1, if any of these functions have to be turned over, that the capability does exist for the Panama Government to run the functions of the various things turned over?

Mr. BOUCHÉ. Sir, if I may answer that, any student of the treaty, if he very carefully assesses all of the things that are going to happen that are supposed to happen on October 1, such as the turning over of the ports, the turning over of the railroad, the turning over of the recreational facilities, the commissaries, at the same time, it is also my understanding that there is going to be a change in our work force as a result of the RIF's and there will be a slacking up in our own organizational structure.

There will be functions that are no longer ours and there will be changed functions. I think this is going to be a difficult circumstance unless plans are very, very carefully made, and at present I personally don't see these kinds of detailed things coming into existence to make this happen.

I just don't see it and this is my personal opinion. The impetus is there on the Americans on the committees, but I am not sure that the impact of what a monumental thing this truly is has grabbed hold of certain counterparts. This is strictly a personal opinion.

Mr. BONIOR. So you are not quite as optimistic as Ambassador Moss and others who have assured us everything is going swimmingly and everything will work out.

Mr. BOUCHÉ. Sir, it's a very difficult situation and I am not privy to all of the facts. I can just tell you about the areas in which I am concerned and which I am knowledgeable.

Mr. BONIOR. Thank you.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. Thank you, Mr. Chairman.

Can you tell me what percentage of Panamanians are working in the Canal at this time?

Mr. BOUCHÉ. No, sir; I don't have access to that information.

Mr. WYATT. Give me a ball park figure, 1 to 10.

Mr. BOUCHÉ. I would say it's approximately 65 or 75 percent.

Mr. WYATT. Are any of them in administrative jobs?

Mr. BOUCHÉ. Yes, sir. May I give you an example?

I am an engineer. I have a number of engineers working for me. There are seven of us, and of the seven there are four Panamanian engineers. In fact, my assistant is a Panamanian engineer, and a darn good one.

Mr. WYATT. You think then they have a capability and skills to run the canal?

Mr. BOUCHÉ. The individuals the Panama Canal Zone has already trained in responsible jobs and are now assisting in the running of the canal, that is not the problem.

Mr. WYATT. What is the problem?

Mr. BOUCHÉ. The management of those individuals by Panamanians. They don't have the expertise in the management.

Mr. WYATT. You don't think the Panamanian Government will elevate those who are now working in the canal to administrative positions so they can manage the canal?

Mr. BOUCHÉ. Sir, the people that are working for me are employees in the civil service. I don't know exactly how that could be accomplished.

Mr. WYATT. Let me ask you about education.

As a new Member of Congress I am not really familiar with the educational system here. Is secondary education funded by the American Government?

Mr. BOUCHÉ. I am on shaky ground here, but as far as I know, the cost of the schools in the Canal Zone are borne for the most part by the tolls. We do collect a portion of the revenue from certain classes of individuals. But the balance of the funds I do believe come from the toll structure.

Mr. WYATT. What classes of individuals?

Mr. BOUCHÉ. We have many students from Panama who are in the American schools in the Canal Zone.

Mr. WYATT. And they pay tuition to the American schools?

Mr. BOUCHÉ. Yes, sir.

Mr. WYATT. Are the schools run by the Panamanian Canal Commission or the Corporation?

Mr. BOUCHÉ. They are run by the Panama Canal Company.

Mr. WYATT. Funded by that company?

Mr. BOUCHÉ. I am sorry, the Canal Zone Government. We tend to think of them as one and the same, and we lose the identity sometimes, but the Canal Zone Government is the proper answer.

Mr. WYATT. Who funds the Canal Zone College?

Mr. BOUCHÉ. I am on shaky grounds, but I believe it is also funded in the same way.

Mr. WYATT. What is the tuition?

Mr. WHEELER. If I may comment on that I believe the tuition now at the Canal Zone is about \$30 to \$35 for a semester hour, substantially higher for Panamanian students attending, and it is open to them also to enroll in the U.S. schools and get a degree at this time.

The cost of the secondary schools, part of it is furnished by the Department of Defense for the military employees' dependents who are sent to the Canal Zone Government's schools. It's just a reimbursement.

The rest of it comes through appropriations from Congress. But that's also reimbursed from the Panama Canal Company. That is my general understanding of the way it works.

Mr. WYATT. Does the Canal Zone College offer a full range of courses?

Mr. BOUCHÉ. It is a 3-year college.

Mr. WHEELER. Yes; it does. It has two 4-year degrees and one is medical technology that they have. It is basically a 2-year institution from there. They have criminal justice programs, engineering, math, a very wide range of topics.

Mr. WYATT. How many students do they have?

Mr. WHEELER. That I cannot answer right at the moment. I am not certain, about 1,200, I think, maybe 1,400. Somebody in the back is saying 1,400.

Mr. WYATT. Most of them are American citizens?

Mr. WHEELER. Yes, sir.

Mr. WYATT. Sixty-five percent are American citizens?

Mr. WHEELER. Yes, sir.

Mr. WYATT. In that range.

Mr. WHEELER. Yes, sir.

Mr. WYATT. If Florida State would come in, would they provide a full range of courses and the same kinds of facilities?

Mr. WHEELER. No, sir.

Mr. WYATT. The same kinds of instruction levels?

Mr. WHEELER. They don't have the lab facilities and some of the other facilities that the Canal Zone College does have at their disposal. It's not quite as far reaching, though they are a 4-year institution.

Mr. WYATT. And they don't plan to provide those kinds of facilities?

Mr. WHEELER. As far as I know, in the past they didn't have them. I am a graduate of Florida State University at their site here, the extension here.

Mr. WYATT. They already have one here.

Mr. WHEELER. They already have one here. It goes through the military and it's at Albrook Air Force Station. They use somebody else's facilities on a loan basis to provide a very, very restrictive type of physics or chemistry. It's limited to that.

They don't have the full lab facilities and facilities the Canal Zone College does have.

Mr. WYATT. Would we have to write special language into the legislation to maintain the Canal Zone College?

Mr. WHEELER. No, sir; I don't believe so. It is already inherent. I think they have included grades through 14, which encompass it in the transfer to the Department of Defense operation. But that is a provision for the entire school system.

There was a proposal by, I believe, Mr. Fuqua from Florida to change this and eliminate the Canal Zone College, per se, and use an extension program, which he believes would cut costs. But some of the costs would be hidden and you would not have the same level of programming presented.

Mr. WYATT. What is the average teacher salary in the Canal Zone for secondary education?

Mr. WHEELER. Sir, I don't know.

Mr. BOUCHÉ. I can't answer that.

Mr. MURPHY. We can get those technical questions for the record.

Mr. WYATT. OK; that's all, Mr. Chairman.

Mr. MURPHY. Mr. Lent?

Mr. LENT. Thank you, Mr. Chairman.

I want to express my own sympathy and concern to the people living in the area to be turned over to the Government of Panama who will be losing, as I understand it, their constitutional protection as American citizens.

Is that correct, Mr. Bouché?

I think you indicated you do personally live in an area that will be turned over to the Government of Panama.

Mr. BOUCHÉ. I live in an area which essentially will be turned over to the Government of Panama. I live in a housing area within a land area which will be controlled by the Commission.

Mr. LENT. You express your concern that on October 1 of this year there will be some functions and jurisdictions and so forth that will be turned over, and you bemoaned the fact that there did not seem to be any machinery in effect to bring this about. So far as you are aware, has the Government of Panama made any preliminary arrangements for assuming the various jurisdictions?

Mr. BOUCHÉ. As the Governor indicated in his talk in much detail, primary talks and meetings of the binational committees have proceeded, but my concern comes from the fact after having read some of these plans and my knowledge of the operating conditions, that I cannot believe that anything formative has come about as yet.

Now, I am also concerned because of the rumors of certain activities; this troubles me.

Mr. LENT. I will get into that in just a moment. But this panel represents democratically elected members of five townsites?

Mr. BOUCHÉ. Yes, sir.

Mr. LENT. Are you not being consulted about machinery that has been set up by the Governor?

Mr. BOUCHÉ. The individual civic councils, to my knowledge, have not been included in any of the binational worker committees, not to my personal knowledge.

Mr. LENT. Well, have you made any overtures to the binational working committees to request that you have some input as the elected representatives?

Mr. BOUCHÉ. Sir, we are not exactly, there is no comparison between our representation and that which you would find in a city in the United States.

Mr. LENT. Well, you are like a town council.

Mr. BOUCHÉ. We are representing our committee, but we have no specific office or any kind of powers whatsoever. We are just employees, like all of the other people. Yet we have been elected to speak for our particular communities.

Mr. LENT. You are akin to a civic association?

Mr. BOUCHÉ. Yes, sir.

Mr. LENT. And do you expect the binational committee will have any kind of public hearing at which your concerns can be expressed?

Mr. BOUCHÉ. Sir, I know of none and I don't expect any.

Mr. LENT. All right.

Now, you were going to tell me and the committee some of the areas of your concern; the rumors, I think you referred to.

Mr. BOUCHÉ. We are very concerned in the area of the nonprofit organizations. The nonprofit organizations, according to article IX of the treaty, provided that they exist under the same terms and conditions before the treaty.

This means that for the 30-month period beginning October 1, 1979, clubs are to maintain a status quo. While this interpretation is held unanimously by the organizations within the Canal Zone, another interpretation has surfaced in the binational committee on nonprofit organizations.

This surfaced through individuals whom we trust, in whom we place our trust, and who have in the past indicated that they were worthy of that trust. Their interpretation is that while the organizations may still exist, they must do so beginning October 1, 1979, under Panama law and this especially is going to eliminate the 30-month status quo period.

What are the organizations involved? Those are your churches, your employee-constructed and financed fraternal organizations and their facilities, employee-furnished and constructed and maintained golf clubs, this sort of thing, boat facilities, club facilities.

For example, the VFW, American Legion, K of C, the various church, religious denominations, these kinds of entities.

Now, let's take one of the clubs, say, run of the mill, veterans clubs. I will not name any individual clubs. The financial implications are clear; the gentlemen who have run these clubs got hold of the labor laws and rules for operating a business in Panama and they have studied them carefully, and no nonprofit organization is going to be able to exist with the cost of electricity, which will triple.

Presently organizations receive electricity from the Panama Canal Company. After October 1 they will be billed by the Panamanian Electric Co., which is I.R.H.E.

For example, the veterans club has a liquor license that will cost them \$400 a month. There will be property tax, income tax, land tax, they will have to adhere to Panama labor laws which include severance pay, Panama, social security, and sales taxes, importation of goods, duty, which was free before, and will no longer be free.

That will hamper the operations and there is no assurance that they will even receive the same postal facilities that the individual employees will have, which means they will have to import everything through Panama if AFO postal facilities are not granted.

The organizations now enjoy commissary privileges. There is no indication that these same organizations will be allowed to buy at the PX. They will be having to buy off the local economy, and this makes it very difficult for these totally financed and totally maintained employee organizations to exist. The Company helps us out when it can, but it does not fund us. It allocates certain land which we develop, we meaning the community and these various clubs.

It's going to be difficult for them to maintain their operations. It has also been suggested by these people whom we trust that, as you know, we pay the minimum wage in the Canal Zone. We won't be able to dispose of the employees; we will have to carry the employees over and we are going to have to continue to pay them the minimum wage and not the prevailing Panama wage.

These kinds of things are prevailing upon these clubs and organizations, and so forth, which would go to make up the fabric and quality of any community, are going to deteriorate if this is true. These are concerns we can get no straight answers to.

Mr. WHEELER. Could I add one more comment?

I don't believe our clubs or churches or whatever are concerned about maintaining things other than as they are. They are concerned about the increases in the electricity, as some of them run

from \$1,000 a month to \$3,000 a month, and they are going to triple.

The other thing is social security, which is retroactive; they are going to have to go back and pay. One club manager told me it was going to cost the club \$50,000 on October 1 to stay in operation because they would have to maintain the same employees and pay into the social security system. They are nonprofit organizations and they just do not maintain a large cash balance.

This is sort of a stronghold within the community to keep the people together where they can intermingle.

Mr. LENT. So what you are really saying is by virtue of the Government of Panama's controls over the utilities and the licensing and the tax authority that they would have and the control over postal facilities that they would have, that Government would have a life or death power over the various activities you have described, the so-called nonprofit organizations?

Mr. BOUCHÉ. Yes, sir, Mr. Lent, and what we are concerned about is as far as the organizations and this panel is concerned, the treaty simply states that there will be no change in the makeup or operation of these organizations for the 30-month period, and we have it on good authority, as I said, we trust this is not Panama's attitude. They want the revenue and they want it now.

Mr. LENT. OK. I have no further questions. Thank you.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. Thank you, Mr. Chairman.

Could you expand on your stated concerns relative to the courts and their jurisdictions?

Mr. BOUCHÉ. I would like to defer to Dr. Cheville.

Mr. LOWRY. What, for instance, is the location of the district court and jurisdiction of that district court? Is that a Federal district court?

Mr. BOUCHÉ. Sir, I goofed.

Dr. CHEVILLE. Mr. Wheeler is with the police. I think he can answer better than I.

Mr. WHEELER. I may have more information on the judicial system.

We have presently on each side of the isthmus a magistrate's court and district court. The same judge runs the district court on both sides and moves from one location to the other. We have two magistrates who are here.

Our concerns are that without going through the preliminary hearing phase, which is in lieu of the grand jury setup down here, people would have a longer period of incarceration before they could go for a hearing on probable cause and presentation of evidence, and this type of thing, because they have to go straight to the district court. This is why we wanted to keep one of the magistrates' courts here.

The other thing was the appeal process which would be cost prohibitive to go to the fifth circuit in New Orleans to appeal from the district court, where we can appeal a misdemeanor, petty larceny right now, and be heard within a few days of the magistrates court trial.

If the person is found guilty he has the right of appeal to the district court locally, and it's a relatively small expense to have an adjustment made if there was an error.

Mr. LENT. What is the limit of jurisdiction of the district court here? I mean, a certain degree misdemeanor, felony?

Mr. WHEELER. The district court has a full range. A misdemeanor or a felony. Everything above 30 days and \$100, and drunk driving and reckless driving. Everything else goes to the district court at this time.

The minor offenses stay with the magistrates' court.

Mr. LOWRY. And you are concerned about the phaseout of both magistrates' courts at this time?

Mr. WHEELER. Exactly, sir. So all we would have is one court.

Mr. BOUCHÉ. During the 30-month period, after the 30-month period we lose it all.

Mr. LOWRY. A different question:

Do you have a position on the make-up of the proposed Commission? You mention the composition of the Commission in your statement.

Mr. BOUCHÉ. Sir, we are very concerned about the makeup of the Commission. I doubt very seriously if we will, frankly, ever be consulted on the makeup of the Commission. The Pacific Council is generally not afforded that privilege. We just want the best available people, those that are knowledgeable and have the expertise necessary.

We are concerned, and you will have to pardon this, about coming under the jurisdiction of a member of the Commission who is no less than—I am sorry, I am saying this poorly—who is simply a political appointee and is totally unfamiliar with this area.

We are concerned about that. I doubt very seriously if we will be consulted.

Mr. LOWRY. No further questions at this time, Mr. Chairman. Thank you.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. I would just like to say, Mr. Bouché, you didn't say that very poorly. I would also like to compliment the civic association for the representation that they have before this committee. Certainly you have pointed out to me as a new member of this committee some of the important social and civic rights that we all enjoy and that you have enjoyed here that will be diminished if not completely taken away.

In the interest of time I think the technical aspects and what we as Congressmen can do to protect you in that regard we will have to do at a later time, but certainly I appreciate your bringing this to our attention, both that aspect of it and the aspect of the problems you will have with your court system here.

I, indeed, will devote an awful lot of attention to that in the upcoming weeks, and I thank you very much.

Again, Mr. Chairman, I compliment the people of the Pacific Civic Council on their representation.

Mr. MURPHY. Governor Evans?

Mr. EVANS. Thank you.

Just a brief clarification on the judiciary system.

As I understand it, the district court here, which is a Federal court, handles the gamut of all cases, local and Federal; in other words, it functions really as a combined Federal and local court; is that correct?

Mr. WHEELER. That is correct, sir.

Mr. CARNEY. OK.

In situations such as this is it not usually the practice for the Attorney General to be the one who determines probable cause? I don't mean Attorney General, U.S. attorney is what I mean; I am sorry.

Mr. WHEELER. No, sir. The provisions for that go straight through the magistrates' court, and the magistrate is the one who will determine that. But, it's frequently evaluated by the U.S. attorney who reviews it.

Mr. CARNEY. You do have a U.S. attorney?

Mr. WHEELER. Yes, sir.

Mr. CARNEY. Is there any reason why he could not assume the functions of determining probable cause?

Mr. WHEELER. We are intermingling the functions of the role of the prosecuting attorney and the courts; the magistrate is the impartial third party.

Mr. CARNEY. But in other jurisdictions the U.S. attorney does serve for the determination of probable cause?

Mr. WHEELER. Excuse me, I don't believe so. I believe the Constitution of the United States guarantees a grand jury for that, or some similar process.

Mr. CARNEY. The U.S. attorney determines probable cause of felons; I am not talking about misdemeanors; so I just wonder whether or not in the object of saving money and so forth, but it has worked in the Virgin Islands, and I think in Guam also.

Mr. WHEELER. There would be recourse eventually; it's a matter of a time factor on the determination in the district court also. But again it's a time factor.

Mr. CARNEY. The other brief question I have, on the one hand we say that the treaty provides that there be no deterioration of the present condition under which you operate and yet, on the other hand, we are told that you being under Panamanian law does make a difference since those two things are not compatible.

Is it not a matter of clarification of the meaning of the treaty before we go any further as applies to those sections because the two things certainly are not compatible.

Mr. BOUCHÉ. Sir, I am sorry, I fail to grasp the thrust of your question.

Mr. CARNEY. My question was, maybe what we are considering, it's good to bring to our attention and I appreciate it, but maybe it's a problem which really isn't a problem, because if the language of the treaty says these organizations shall operate in no less favorable manner and the laws of Panama would make them operate in a less favorable manner, then it seems clear they do not follow the laws, at least for the 2½-year period.

Mr. BOUCHÉ. Sir, our concern would be who would the watchdog be to determine that this is truly so? Who would decide?

Mr. CARNEY. I see. I think that should be a clarification, all right.

No further questions, Mr. Chairman.

Mr. MURPHY. Thank you.

Other questions?

Mr. BAUMAN. Did I understand you to say you feel from your sources that the Panamanian Government position is that the back social security tax would have to be paid and you are talking about payments in their retirement, the Panamanian social security system?

Mr. WHEELER. That is correct, sir.

Mr. BAUMAN. Now, I was told by a businessman here that there are also claims being raised that the Panamanian Government will collect back taxes of corporations, not nonprofit corporations, but any business corporations from the date, for instance, that they were originally incorporated in the zone.

Have you heard any evidence to that effect?

Mr. BOUCHÉ. We have heard rumors to that effect, and in conjunction with that I have known of several Americans, whom I would rather not name, who have attempted to retire in Panama and were told—and this is rumor—that they had to pay up their back taxes since they were binational like myself. Panama considers me a Panamanian.

Mr. BAUMAN. Wouldn't that wipe out a great many people's personal savings, business accumulated assets and, as you indicate in the case of nonprofit groups, might eliminate them completely?

Mr. BOUCHÉ. You just named some of the major concerns we have worries about, questions about, but as yet we have no firm answers.

Mr. BAUMAN. That's a point, Mr. Chairman, I think we ought to find out from the Canal Commission or the binational groups, and find out exactly what the status of that is because it could be devastating, it seems to me.

Mr. MURPHY. Any retroactive payments or requirements that are prohibited by the treaty?

Mr. BOUCHÉ. I am sorry, sir; I would rather not respond to that question.

Mr. MURPHY. I am not asking for a response. Our counsels inform us that is the case.

Mr. BAUMAN. Except under article IX it says they have to qualify and receive licenses to do business in the Republic of Panama, and I gather contingent upon getting that license is payments of back taxes from some unspecified date, at least that claim is being discussed.

Mr. MURPHY. I think counsel has indicated that the treaty has got an ex post facto agreement in it or element to it.

Mr. BOUCHÉ. Sir, if I may I don't believe there is any problem with the American understanding of how this should go. I think the problem lies on understanding what will be acceptable to Panama's Government and what is desirable in there or whatever word you care to use, sir.

We would like to know from them specifically what are their thoughts.

Mr. MURPHY. I think we will get a clarification on that.

Mr. BOUCHÉ. We would appreciate that very much.

Mr. MURPHY. Mrs. Munchbach and gentlemen, we certainly appreciate your being here to give us these ideas.

Mr. BOUCHÉ. We thank you for your attention. [Applause.]

Mr. MURPHY. The next group is Mr. Phillip Henry, Congress of Latin American Civic Councils; Mr. Samuel Blenman; Mr. Seabert Haynes; and Mr. Clarence Gorden.

All statements will be printed in the record in their entirety and, Mr. Henry, if you will proceed?

[The statements follow:]

RAINBOW CITY, CANAL ZONE, February 23, 1979.

Hon. JOHN M. MURPHY,
Chairman, Committee on Merchant Marine and Fisheries,
U.S. House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: The Congress of Latin American Civic Councils, in representation of the Non-U.S. citizen employees residing in the Canal Zone, welcomes your Subcommittee on the Panama Canal to the Canal Zone. We are aware that the Subcommittee on the Panama Canal does not have direct oversight of the provisions for employees' welfare and conditions of living within the Implementing Legislation (H.R. 111 and H.R. 1716) now before the House of Representatives. However, as members of Congress you will have voice and vote in the final determination of the Implementing Legislation. We wish, therefore, to avail ourselves of this opportunity to bring to your attention some of the shortcomings of the documents aforementioned, along with our proposals for positive adjustments.

In so doing, we are in no way attempting to circumvent the provisions of the Treaties or Related Documents, but rather attempting to assure that the intent, in regard to employees, be so instituted as to serve the best interest of both the United States Government and the employees involved.

Over the past two years these concerns and recommendations for corrections and adjustments in the Panama Canal Treaties, related Documents and Implementing Legislation have been fully expressed and widely disseminated to members of the Executive and Legislative Organs of the United States Government. (Attachments: No. 2. Position Paper—July, 1977. No. 3. Letter to the President—June 17, 1978). It is disquieting and rather demoralizing that at this late date, adequate protection and assurances to Non-U.S. citizen employees are still enigmatic, ambiguous or nebulous and in some areas non-existent (employment rights outside the Republic of Panama; special immigrant status; compensation for increase in cost of living; collective bargaining), despite the expressed intent of the Panama Canal Treaties that future conditions for present employees of the Canal Enterprise will be "no less favorable" than those previously enjoyed.

Our fears that the responsibility for our future well-being would be assigned by nationality is well founded as is evidenced by our exclusion from certain beneficial provisions under the Panama Canal Treaties and Implementing Legislation. The economical and political priorities that have molded the Panama Canal Treaties and Implementing Legislation have taken precedence over the social realities. This omission expresses total disregard for the historical facts of our presence here on the Isthmus of Panama as well as our contributions, despite adverse conditions, over the past six decades to the successful operation of the Canal Enterprise. These people, imprudently overlooked, are in their vast majority pro-American in sentiments with a good-will which will prove an important factor in achieving the political intents of the Panama Canal Treaties in this hemisphere.

We must state that we appear at these final hearings on the Implementing Legislation with mixed emotion:

1. Incredulity that injustices would continue to be perpetrated against a people who have such a commendable record of service and loyalty to the United States Government.

2. Indignation that the United States of America would allow the sacrifice of a people in an effort to promote economical political policies.

It is our hope that these hearings on the implementation of the Panama Canal Treaties will erase these inequities, some of which we will now attempt to underscore in our Position Paper (Attachment No. 1).

Very truly yours,

PHILLIP A. HENRY,
President, Congress of Latin American Civic Councils.

POSITION PAPER, CONGRESS OF LATIN AMERICAN CIVIC COUNCILS, PANAMA CANAL
ZONE—FEBRUARY 23, 1979

The Panama Canal Treaties and Documents Associated with the Panama Canal Treaties have made general commitments to Non-U.S. citizen employees which are to be effected by Implementing Legislation. Our perusal of the Treaties, Related Documents and Implementing Legislations (H.R. 111 and H.R. 1716) forces us to bring to your attention concerns along with recommendations as examples of some of our preoccupations, with the protection afforded Non-U.S. citizen employees. This paper, however, by no means exhausts the list of anomalies existing in the document aforementioned.

EMPLOYMENT

Article X, Paragraph 7 of the Panama Canal Treaties provides that the Government of the United States will limit its effort to utilize displaced Non-U.S. citizen employees only in U.S. Government activities located within the Republic of Panama. H.R. 111, Title III, Chapter 2, Section 322a, b, c, and H.R. 1716, Title I, Chapter 3, Subchapter 3, Section 203 contain similar limitations. The Panama Canal Treaties in Article X, Paragraph 7 correct this exclusion by stipulating that the Republic of Panama will provide special job placement assistance to those displaced employees.

It is our contention that these are not viable solutions inasmuch as there are limited opportunities for employment outside of the Canal Enterprise with the U.S. Government in Panama. It is also totally unrealistic to assume that the Government of Panama with its own acute unemployment problems can, in any effective way, adequately resolve the unemployment plight of added thousands.

It is further distressing that Public Law 95-454 in Chapter 71, Subchapter 1, Section 7103 a.2.B.i excludes Non-U.S. citizen employees outside the United States from adequate protection.

We recommend that:

- (1) Displaced Non-U.S. citizen employees, who so desire, be allowed to compete for jobs as Federal employees outside the Republic of Panama.
- (2) The clause of Public Law 95-454, which excludes Non-U.S. citizens, be waived for employees of the future Canal Enterprise.

MEDICAL SERVICES

Article VIII, Paragraph 2 of the Agreement in Implementation of Article III of the Panama Canal Treaty provides health and medical benefits to Non-U.S. citizens employees for a 30-month period at the Coco Solo and Gorgas Hospitals. Subsequent to that period these employees shall be the responsibility of the Social Security System of the Republic of Panama.

We make the following observations:

(1) Panama's Health and Maternity Benefits Plan under the Social Security System is a Health Insurance Plan which is an integral part of the Government's Retirement Program. Present Non-U.S. citizen employees participate in these programs separately as Federal employees (FEHBA, Civil Service Retirement and, additionally, FEGLI). To our knowledge the mechanism to incorporate this distinct system into that of Panama's has not been forthcoming, which creates the possibility of having Non-U.S. citizen employees relinquish all Federal programs.

(2) The addition of approximately 40,000 more participants to the medical program of the Republic of Panama is certain to have traumatic and disruptive effects on the people and the system involved.

(3) The exclusion of these 40,000 persons from medical benefits in the DOD medical facilities at Coco Solo and Gorgas Hospitals will undermine the effectiveness of these facilities, especially Gorgas Hospital with its world renown reputation, along with the loss of a well trained and efficient personnel.

(4) The exclusion of the Civil Service Annuitants who presently participate in the special clinics (diabetic, geriatric, hypertension, etc.) at Gorgas and Coco Solo Hospitals will certainly have an adverse effect on these individuals which could be fatal.

In light of the above we are recommending that modifications be made to continue medical services to past and present employees of the Canal Enterprise throughout the life of the treaty. This action will accrue to the benefit and efficient operation of the Canal Enterprise as has already been historically proven.

SPECIAL IMMIGRANTS

H.R. 111 and H.R. 1716 will establish "special immigrant" status to Civil Service Annuitants and residents of the former Panama Canal Zone. This in itself is commendable and necessary.

It should be noted, however, that the vast majority of Non-U.S. citizen employees who will be displaced are residents of the Republic of Panama since residency in the present Canal Zone has been restrictive since 1954.

The Congress of Latin American Civic Councils recommends that the language on "special immigrants" be modified to include all Non-U.S. citizen employees who have served the U.S. Government faithfully regardless of residency, whose experience and talent will prove assets to the U.S. communities.

In concluding our presentation, we wish to address two areas in which the lack of specific language seems to be causing misinterpretation of the intent of the Panama Canal Treaties.

(1) H.R. 1716, Title 1, Section 232b authorizes the Panama Canal Commission to provide funding for eligible Non-U.S. citizen dependents who are entitled to complete their education under the DoDDS system. No such authorization is granted to the Department of Defense. Specific instructions that will authorize DOD to fund these activities are necessary and recommended in order to achieve the intent of the treaties.

(2) Article VIII, Section 2 of the Documents Associated with the Panama Canal Treaties states that employees of the Panama Canal Commission shall continue to receive medical benefits from United States facilities in the Republic of Panama. This article implies that DOD Non-U.S. citizen employees and their dependents along with dependents of the Commission employees will receive similar benefits, but does not say so in specific language. It is recommended that specific language which includes DOD employees and dependents of all employees be added to the Implementing Legislation.

Mr. Chairman and Members of Congress, it is our hope that our concerns and recommendations will receive positive and favorable action from your honorable body. Thank you very much for this opportunity to address you.

SEABERT HAYNES,
President, Pedro Miguel Civic Council.

PHILLIP A. HENRY,
President, Rainbow City Civic Council.

SAMUEL H. BLENMAN,
President, Paraiso Civic Council.

CLARENCE G. GORDON,
President, Santa Cruz Civic Council.

[Attachment 2]

JOINT POSITION PAPER, LATIN AMERICAN CIVIC COUNCILS, PANAMA CANAL ZONE—
JULY 1977

The Latin American Civic Councils wish to take this opportunity to express to you the apprehensions and anxieties within the Latin American communities regarding the impending treaty between Panama and the United States of America. The information disseminated about the contents of the proposed treaty indicates that it will have a traumatic effect on the lives of all employees of the Panama Canal Company/Canal Zone Government unless specific and proper safeguards become an integral part of any agreement between the countries involved. Although we speak for a particular segment of the employees of the Panama Canal Company/Canal Zone Government, we are cognizant of the fact that identical concerns are shared by all employees for the future welfare of themselves and their families. In all cases, we foresee sociological and economical crises of immense magnitude.

Before we present our reaction to the treaty, as we are given cause to perceive it, we are impelled to provide you with a brief historical resume of the people we represent. The residents of the Latin American communities, in their majority, are Panamanians of West Indian origin; a distribution which is also reflected in the non-U.S. citizen employee work force of the Panama Canal Company/Canal Zone Government. Our presence in the Republic of Panama has been occasioned by the construction and operation of the Panama Railroad and the Panama Canal. Thousands migrated from the various Caribbean Islands, thus providing the work force necessary for the construction of the Railroad and Canal. As is natural with any group of people who share a similar ethnic background, their everyday life in Panama patterned the cultural and linguistic practices of their homeland. The

history of the development of Panama shows that these immigrants contributed immeasurably to the cultural, social, educational, and economical development of the Republic of Panama.

Although many of these workers returned to their homes after the completion of the Panama Canal, a significant number remained on the Isthmus of Panama, thereby providing the varied and specialized manpower necessary for the continuous efficient operation of the Panama Canal. Their loyalty and dedication to the United States through the Company/Government throughout two world wars and many other crisis situations is a matter of record.

The presence in the Republic of Panama of the West Indians and their offsprings, who are now Panamanians, have over the years created tensions, conflicts and misunderstandings, some of which are still extant. These past experiences give us cause to be very apprehensive about our future existence on the eve of a new treaty on the Panama Canal. It would be a most catastrophic experience for these people should the Government to whom they have given their all fail to provide the necessary safeguards that would assure them of continued gainful employment or a future devoid of unnecessary hardships and preoccupations. As a people who have loyally dedicated their lives and service to the United States Government through the Panama Canal Company/Canal Zone Government, we can never over-emphasize the fact that we envision disastrous changes in our life-style and a dire future should the United States Government not deem it fit to provide for us protection as Federal employees as opposed to nationals of a particular country.

The terms, as we understand them, under which the present treaty is being negotiated, will eliminate the jobs of a vast majority of the residents of the Latin American communities and, at the same time, dislocate a significant number of them. These affected families need to be assured that provisions will be made to provide them with proper economic protection.

In the normal process of establishing themselves as members of a community, employees have incurred varying degrees of financial obligations. Each individual was accepted as a party to these contractual commitments based on the natural assumption that there is a sense of permanency and stability in his status as an employee of the Company/Government. Default on these contracts will create additional mental and social anguish which will further aggravate the hardships of a transition and adaptation to a new life-style. We envision that even early U.S. Civil Service Retirement will not adequately suffice in providing solutions to the problems, financial and otherwise, that the employees will face in the actual fulfillment of a new treaty. It is recommended that an agency be established with the responsibility and authority to resolve, to the satisfaction of the individual employee adversely affected by the implementation of a new treaty, the problems peculiar to his new status.

We continue to recommend revision of the U.S. Immigration Laws and the waiving of other restrictions in order to provide avenues through which those who may so choose can reestablish normalcy in their lives without undue difficulties.

The "Assurances for Present Employees of the Panama Canal Company/Canal Zone Government Under a New Panama Canal Treaty", which do not address themselves to the foregoing concerns, project a rather disquieting future for the non-U.S. citizen employees through glaring omissions which have caused widespread concern within our various communities.

The Latin American Civic Councils, distressed by the foreboding of the aforementioned omissions, make the following recommendations:

1. That medical care be assured for all present non-U.S. citizen employees and their families.

Medical care has been assured only to the U.S. citizen employee who may continue to work for the new Canal Administration. This assurance should also extend to their counterpart, the non-U.S. citizen. Further, the vast majority of residents of the Latin American communities have indicated their preference for retaining U.S. Civil Service Retirement. At present, through the continued payment of premiums to FEHBA, Civil Service Annuitants have medical protection and access to hospitals operated by the Canal Zone Government. The absence of such protection and access to U.S. Medical facilities would have a far-reaching detrimental effect on the lives of these employees and their families. At the same time, arrangements must be made for continued medical protection for the unemployed who will have no assured income due to the implementation of a new treaty.

2. That assistance, financial and otherwise, be provided in order to relieve the hardship of those who will be forced to relocate because of loss of job and/or land turn-over.

The unemployed will be experiencing extreme difficulties in meeting their financial obligations and will also be in a most disadvantageous position in their attempts to provide adequate accommodations for themselves and their families.

3. That definite provisions be made for the continued gainful employment of non-U.S. citizen employees, locally and overseas.

We continue to reiterate that these employees should be given protection as Federal workers in order to provide them with a greater sense of security and to restore the now ebbing morale of the non-U.S. citizen employees of the Panama Canal Company/Canal Zone Government. Provisions should be made for the fullest utilization of displaced employees of the Company/Government in other Federal agencies.

4. That non-U.S. citizen employees be provided with assurances for the continued education of their children in any prevailing school system, and that students in the Canal Zone School System at the time of implementation of a new treaty be given the option to continue their education within a similar system.

5. That guidelines be established whereby the concept of "Upward Mobility" become an integral part of the policies of the new Canal Administration, thereby assuring present non-U.S. citizen employees that their abilities and potentials will not be arbitrarily disregarded.

In concluding, we wish to underscore our apprehensions concerning the implementation of a new treaty which could very easily consign the responsibility for our future well-being in a manner inimical to our best interest. This projection has had a demoralizing effect on a people who for decades have loyally dedicated their lives and energies to the operation of the Company/Government.

Any treaty concluded must address itself to these human factors by providing equitable protection and benefits to all whether they be U.S. or non-U.S. employees. To do otherwise would be tantamount to condemning a segment of humanity to incalculable miseries and hardships that are totally incompatible with any concept of human dignity and existence. We urge your fullest attention to our concerns.

SAMUEL H. BLENMAN,
President, Paraiso Civic Council.

CLARENCE G. GORDON,
President, Santa Cruz Civic Council.

PHILLIP A. HENRY,
President, Rainbow City Civic Council.

EUGENE A. JOHNSON,
President, Pedro Miguel Civic Council.

Enclosure: Assurances for Present Employees of the Panama Canal Company/Canal Zone Government Under a New Panama Canal Treaty.

LATIN AMERICAN CIVIC COUNCILS,
Panama Canal Zone, June 17, 1978.

The PRESIDENT,
The White House, Washington, D.C.

DEAR MR. PRESIDENT: We extend to you a hearty welcome on the occasion of your visit to the Republic of Panama. We do hope and pray that your brief stay be pleasant as well as productive in terms of the foreign policy of the United States of America.

We are availing ourselves of this opportunity to discuss with you some of our continuing concerns in regard to the "Treaties Relating to the Panama Canal". There is no doubt that these treaties will seriously affect the lives of the non-United States nationals employed by the Panama Canal Company/Canal Zone Government as well as the United States citizens for years to come.

The assurances given in the treaty and its related documents address themselves in their major part to the United States citizen employees of the Canal enterprise. This in itself is commendable; however, as partners of over three score years in this unique operation, it is our firm belief that a great deal more assurances should be afforded to a people who have shared equally in the construction, operation and maintenance of the Panama Canal. We do feel that there is a moral contract on the part of the Government of the United States of America to assure our future well-being, despite our nationality. A perusal of our record will leave no doubt that our claim is fair and just.

We, the non-United States national employees, therefore, approach you with the conviction and deep anticipation that your good offices and renowned good will to-

wards all peoples will assist in relieving our anxieties through just and adequate legislation vis a vis treaty implementation.

With these thoughts in mind we urge your positive consideration in making the following recommendations a part of the implementing legislation.

1. That an agency be established with the authority to resolve the financial hardships of displaced employees in specific and equitable terms.

We continue to be apprehensive about the future of the young employees who will be jobless as a consequence of treaty implementation. We believe that it is significant to note and seriously consider the fact that the young employees in question, quite naturally, made plans for their future based on the expectation of continued employment and concomitant reasonable remuneration. The impact of treaty implementation on their lives could well be disastrous.

2. That all displaced employees be extended the option to work for the Federal Government outside of the Republic of Panama.

Guarantees for future employment of displaced non-United States nationals within the treaty are limited to the Republic of Panama (unlike their United States counterparts). The unemployment picture in the Republic of Panama can provide no assurance to those who will have to seek jobs. They should be afforded all available options irrespective of nationality.

3. That displaced employees with residency outside the Canal Zone be also granted the opportunity to become "Special Immigrants."

We applaud the projected implementing legislation on "Special Immigrants" and urge its adoption.

4. That the transfer of responsibility for our health and medical benefits to the Social Security System of the Republic of Panama be accomplished over a period of at least ten (10) years.

We are concerned about the haste with which responsibility for our health and medical benefits are to be transferred to the Social Security System of the Republic of Panama. We are convinced that it would be to the best interest of all parties concerned should the period of transfer be extended. This would not only alleviate shock and apprehension but would allow for timely studied decisions and adaptations in respect to this crucial change.

5. It is impossible for us to present a detailed discussion of our concerns within the context of this letter. In the past we have had the opportunity to testify before congressional committees and indications are that we will have similar opportunities in the very near future in regard to the implementing legislation on the new treaties. We wish to be assure that should hearings be held in continental United States that provisions will be made to assist us with the means of transporting ourselves to the Capital.

Mr. President, we are fully aware of the myriad problems you face daily, both in the world community and at home. However, we must implore that you give serious consideration to our apprehensions and our suggestions. We honestly feel that positive reaction to our requests will again underscore the sense of fair play and firm adherence to democratic principles under which the United States of America functions.

We have the honor to remain,
Most respectfully yours,

SAMUEL H. BLENMAN,
President, Paraiso Civic Council.

EUGENE A. JOHNSON,
President, Pedro Miguel Civic Council.

PHILLIP A. HENRY,
President, Rainbow City Civic Council.

CLARENCE G. GORDON,
President, Santa Cruz Civic Council.

STATEMENTS OF PHILLIP HENRY, PRESIDENT, RAINBOW CITY CIVIC COUNCIL, AND PRESIDENT, CONGRESS OF LATIN AMERICAN CIVIC COUNCILS; SAMUEL BLENMAN, PRESIDENT, PARAISO CIVIC COUNCIL; SEABERT HAYNES, PRESIDENT, PEDRO MIGUEL CIVIC COUNCIL; CLARENCE GORDON, PRESIDENT, SANTA CRUZ CIVIC COUNCIL

Mr. HENRY. Good morning, gentlemen.

I am Phillip Henry, president of the Rainbow City Civic Council.

On my right is Mr. Gordon of the Santa Cruz Civic Council; Mr. Blenman, president, Paraiso Civic Council, and Mr. Seabert Haynes, president, Pedro Miguel Civic Council.

I am also president of the Congress of Latin American Civic Councils, and will be speaking as a representative for the group, but not as their sole speaker, however.

Mr. Chairman and Members of Congress, the Congress of Latin American Civic Councils, in representation of the non-U.S. citizen employees residing in the Canal Zone, welcomes your subcommittee on the Panama Canal to the Canal Zone.

We are aware that the Subcommittee on the Panama Canal does not have direct oversight of the provisions for employees' welfare and conditions of living within the implementing legislation, H.R. 111 and H.R. 1716, now before the House of Representatives.

However, as Members of Congress, you will have voice and vote in the final determination of the implementing legislation. We wish, therefore, to avail ourselves of this opportunity to bring to your attention some of the shortcomings of the documents aforementioned, along with our proposals for positive adjustments.

In so doing, we are in no way attempting to circumvent the provisions of the treaties or related documents, but rather attempting to assure that the intent, in regard to employees, be so instituted as to serve the best interest of both the U.S. Government and the employees involved.

Over the past 2 years these concerns and recommendations for corrections and adjustments in the Panama Canal treaties, related documents and implementing legislation, have been fully expressed and widely disseminated to members of the executive and legislative organs of the U.S. Government.

These are attachments: 2. Our position paper on July 1977; 3. Our Letter to the President on June 17, 1978. It is disquieting and rather demoralizing that at this late date adequate protection and assurances to non-U.S. citizen employees are still enigmatic, ambiguous or nebulous and in some areas nonexistent—employment rights outside the Republic of Panama; special immigrant status; compensation for increase in cost of living; collective bargaining—despite the expressed intent of the Panama Canal Treaties that future conditions for present employees of the canal enterprise will be “no less favorable” than those previously enjoyed.

Our fears that the responsibility for our future well-being would be assigned by nationality is well founded as is evidence by our exclusion from certain beneficial provisions under the Panama Canal Treaties and implementing legislation.

The economical and political priorities that have molded the Panama Canal Treaties and implementing legislation have taken precedence over the social realities. This omission expresses total disregard for the historical facts of our presence here on the Isthmus of Panama as well as our contributions, despite adverse conditions, over the past six decades to the successful operation of the canal enterprise.

These people, imprudently overlooked, are in their vast majority pro-American in sentiments with a good will which will prove an important factor in achieving the political intents of the Panama Canal Treaties in this hemisphere.

We must state that we appear at these final hearings on the implementing legislation with mixed emotion:

First, incredulity that injustices would continue to be perpetrated against a people who have such a commendable record of service and loyalty to the U.S. Government.

Second, indignation that the United States of America would allow the sacrifice of a people in an effort to promote economical and political policies.

It is our hope that these hearings on the implementation of the Panama Canal Treaties will erase these inequities, some of which we will now attempt to underscore in our position paper.

The Panama Canal Treaties and documents associated with the Panama Canal Treaties have made general commitments to non-U.S. citizen employees which are to be effected by implementing legislation. Our perusal of the Treaties, related documents and implementing legislation, H.R. 111 and H.R. 1716, forces us to bring to your attention concerns along with recommendations as examples of some of our preoccupations, with the protection afforded non-U.S. citizen employees. This paper, however, by no means exhausts the list of anomalies existing in the document aforementioned.

Article X, paragraph 7 of the Panama Canal Treaties provides that the Government of the United States will limit its effort to utilize displaced non-U.S. citizen employees only in U.S. Government activities located within the Republic of Panama.

H.R. 111, title II, chapter 2, section 322 A, B, C, and H.R. 1716, title I, chapter 3, subchapter 3, section 203 contain similar limitations. The Panama Canal Treaties in article X, paragraph 7, correct this exclusion by stipulating that the Republic of Panama will provide special job placement assistance to those displaced employees.

It is our contention that these are not viable solutions inasmuch as there are limited opportunities for employment outside of the canal enterprise with the U.S. Government in Panama. It is also totally unrealistic to assume that the Government of Panama with its own acute unemployment problems can, in any effective way, adequately resolve the unemployment plight of added thousands.

It is further distressing that Public Law 95-454 in chapter 71, subchapter 1, section 7103(a)(2)(B)(I) excludes non-U.S. citizen employees outside the United States from adequate protection.

We recommend that:

First, displaced non-U.S. citizen employees, who so desire, be allowed to compete for jobs as Federal employees outside the Republic of Panama.

Second, the clause of Public Law 95-454, which excludes non-U.S. citizens, be waived for employees of the future canal enterprise.

Article VIII, paragraph 2 of the agreement in implementation of article III of the Panama Canal Treaty provides health and medical benefits to non-U.S. citizen employees for a 30-month period at the Coco Solo and Gorgas Hospitals. Subsequent to that period these employees shall be the responsibility of the social security system of the Republic of Panama.

We make the following observations:

First, Panama's health and maternity benefits plan under the social security system is a health insurance plan which is an integral part of the Government's retirement program. Present non-U.S. citizen employees participate in these programs separately as Federal employees. FEHBA, which is health insurance, civil service retirement and, additionally, FEGLI, which is life insurance.

To our knowledge, the mechanism to incorporate this distinct system into that of Panama's has not been forthcoming, which creates the possibility of having non-U.S. citizen employees relinquish all Federal programs.

Second, the addition of approximately 40,000 more participants to the medical program of the Republic of Panama is certain to have traumatic and disruptive effects on the people and the system involved.

Third, the exclusion of these 40,000 persons from medical benefits in the DOD medical facilities at Coco Solo and Gorgas Hospitals will undermine the effectiveness of these facilities, especially Gorgas Hospital with its world renown reputation, along with the loss of a well-trained and efficient personnel.

Fourth, the exclusion of the civil service annuitants who presently participate in the special clinics, diabetic, geriatric, hypertension, et cetera, at Gorgas and Coco Solo Hospitals will certainly have an adverse effect on these individuals which could be fatal.

In light of the above we are recommending that modifications be made to continue medical services to past and present employees of the canal enterprise throughout the life of the treaty. This action will accrue to the benefit and efficient operation of the canal enterprise as has already been historically proven.

H.R. 111 and H.R. 1716 will establish "special immigrant" status to civil service annuitants and residents of the former Panama Canal Zone. This in itself is commendable and necessary.

It should be noted, however, that the vast majority of non-U.S. citizen employees who will be displaced are residents of the Republic of Panama since residency in the present Canal Zone has been restrictive since 1954.

The Congress of Latin American Civic Councils recommends that the language on "special immigrants" be modified to include all non-U.S. citizen employees who have served the U.S. Government faithfully regardless of residency, whose experience and talent will prove assets to the U.S. communities.

In concluding our presentation, we wish to address two areas in which the lack of specific language seems to be causing misinterpretation of the intent of the Panama Canal treaties.

One, H.R. 1716, title 1, section 232b authorizes the Panama Canal Commission to provide funding for eligible non-U.S. citizen dependents who are entitled to complete their education under the DOD's system. No such authorization is granted to the Department of Defense. Specific instructions that will authorize DOD to fund these activities are necessary and recommended in order to achieve the intent of the treaties.

Two, article VIII, section 2 of the documents associated with the Panama Canal treaties states that employees of the Panama Canal Commission will continue to receive medical benefits from U.S. facilities in the Republic of Panama. This article implies that DOD

non-U.S. citizen employees and their dependents along with dependents of the Commission employees will receive similar benefits, but does not say so in specific language.

It is recommended that specific language which includes DOD employees and dependents of all employees be added to the implementing legislation.

Mr. Chairman and Members of Congress, it is our hope that our concerns and recommendations will receive positive and favorable action from your honorable body.

Signed, Phillip A. Henry; Seabert Haynes; Samuel H. Plenman, and Clarence G. Gordon.

Thank you very much for this opportunity to address you.

Mr. MURPHY. Thank you, Mr. Henry.

Did you receive a response to your letter of June 17 to the President?

Mr. HENRY. Yes; we did.

Mr. MURPHY. Would you give us a copy of that response for the record, please?

Mr. HENRY. Yes.

[The letter follows:]

DEPARTMENT OF STATE,
Washington, D.C., August 2, 1978.

Mr. SAMUEL H. BLENMAN,
President, Paraiso Civic Council,
Paraiso, Canal Zone.

DEAR MR. BLENMAN: The President has asked me to reply to your letter of June 17 on behalf of the Latin American Civic Councils concerning the impact of the Panama Canal Treaty on employees of the Panama Canal Company and the Canal Zone Government who are not citizens of the United States. He very much appreciated the Latin American Civic Councils' warm welcome on the occasion of his visit to Panama. As he indicated during his visit, we are mindful of the great contribution made by non-United States citizen employees in the construction, operation and maintenance of the Panama Canal. Their loyalty and dedication continue to be a source of pride and inspiration in the operation of the Canal.

We appreciate that the coming into force of the Panama Canal Treaty will be a major transition. The Treaty will affect Canal employees, regardless of nationality. It is our intention that those who have spent all or most of their working lives in the service of the Canal will not have to start anew. Both the United States and Panama will have responsibilities in this regard.

For our part, we intend to assist in minimizing any adverse consequences the Treaty may cause. We consider that this can be accomplished by the United States Government agencies which will function under the Treaty and does not require the establishment of another agency, as you recommend.

In your letter and in the attached Joint Position Paper of the Latin American Civic Councils, you have expressed understandable concerns about the effects of the Treaty on non-United States citizen employees. I would like to respond to these concerns by describing in general terms the protective measures for present non-United States citizen employees which the Administration plans to propose to Congress. Those of principal interest are:

Health and Medical Benefits: The Agreement in Implementation of Article III of the Treaty permits non-U.S. citizen employees to continue to receive health and medical benefits from U.S. facilities during a transitional period of thirty months following entry into force of the Treaty. After this transition period, these employees may either continue their coverage under the Federal Employees Health Benefits Plan or enroll in the Health and Maternity benefits program of the Social Security System of Panama. Thus, the option of continuing coverage under presently applicable insurance programs is assured, while a period of 30 months for the transition from U.S. to Panamanian facilities is provided. We believe these arrangements provide adequate protection to our non-U.S. citizen employees.

Special Immigration: The Administration will recommend to Congress special immigrant status for Panamanian employees who have served at least one year with the Panama Canal Company or the Canal Zone Government and who reside in

the Canal Zone, or who are either retired or who have 15 years or more of faithful service on the date of entry into force of the Treaty and subsequently retire.

Although displaced employees will not be automatically granted special immigrant status, they will be eligible to apply for this status under present law (in addition to the new provisions described above) if they are retired or have 15 years or more service. The fact that these employees have been displaced will be considered in applying present law.

Reemployment and Placement Services: Under the Treaty, the United States and Panama are committed to assist employees who do not have sufficient years of service to qualify for retirement in obtaining continued employment. To that end, the United States and Panama will cooperate, to the maximum extent feasible, in providing these employees with jobs in Panama with one of the two governments. Non-United States citizen employees separated from their employment as a result of the implementation of the Treaty will be placed, to the maximum extent feasible, in other appropriate jobs in the United States Government activities in Panama. Those non-United States citizen employees for whom there are no jobs with the Republic of Panama or the United States and are not eligible for retirement, will be provided special job placement assistance by the Republic of Panama. We believe these provisions to be more than adequate, and do not regard a guaranteed right to continued U.S. employment as necessary or feasible.

Congressional Hearings: We appreciate the vital nature of your concerns regarding the Treaty, and your desire to testify to the fullest extent possible before interested Congressional committees. Although the Department of State is unable to assure you of assistance in travel to and from Washington, we suggest that you communicate directly with individual committees as hearings are planned.

Thank you for having shared with the President your views and those of the Latin American Civic Councils. In the event you have any further questions or comments, please let me know.

Sincerely,

RICHARD W. WYROUGH,
*Deputy Special Representative of
the Secretary for Panama Treaty Affairs.*

Mr. MURPHY. Paragraph 4 of article VI of the implementing agreement for article III provides non-U.S. employees will have an opportunity to occupy or buy housing in the canal area communities where they now live.

What information has the United States or Panama given you concerning these housing rights?

Mr. HENRY. To date none. There have been rumors, hearsay, but we have not had any specific information. We have been trying to get this, but to date our information is that they have not made any decision as far as this is concerned.

Mr. MURPHY. What is the total population of Caribbean non-U.S. citizens as related to the Canal Zone?

Mr. HENRY. In the Canal Zone itself?

Mr. MURPHY. And those who live outside of the Canal Zone.

Mr. HENRY. There are approximately 14,000 canal employees; approximately 10,000 are non-U.S. citizens, which would give—these are just round figures—40,000 dependents along with employees, rough figures. I don't have any accurate estimates.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. Mr. Henry, do you have that letter or response from the President with you?

Mr. HENRY. Yes.

Mr. BONIOR. Do you want to tell us what it says or share that with us? Would you like to share that letter with us?

Mr. HENRY. The letter that I received from the President?

Mr. BONIOR. Yes; his response.

There are several points you raised in your letter to him.

Mr. HENRY. OK. May I highlight some of the things that concern us in the answer?

It was answered by Mr. Richard Wyrrough, Deputy Special Representative of the Secretary for Panama Treaty Affairs.

It was addressed to Mr. Blenman.

[Mr. Henry read letter previously inserted in record:]

Mr. BONIOR. I take it from your request and the response that you have just read that you are obviously not pleased at all and, in fact, you are terribly disappointed in the response.

Mr. HENRY. Definitely.

Mr. BONIOR. They don't seem to answer any of the things you have suggested here.

In the employment picture, I assume you have great anxieties about the fact the employment figure is going to be really poor given the fact that the Placement Service, as recommended both from the Panamanian side and American side is a fine thing to have, but there is nothing to be placed into and it's going to be difficult.

Mr. Chairman, I think there are probably other people who want to ask questions, and I yield back the balance of my time.

Mr. MURPHY. Mr. Bauman.

Mr. BAUMAN. Mr. Henry, I want to thank you for your very excellent statement.

Did you want to add something?

Mr. GORDON. I just wanted to add briefly that on the job placement program for Panamanians within the area of Panama we are deeply concerned because right now the unemployment situation in Panama is very high. We cannot view how we would be given job placement after the treaty goes into effect, and this is one of the reasons why we feel the Panamanians should be given an opportunity to also have job placement in the United States.

Mr. BAUMAN. Mr. Henry, I want to thank you for your eloquent statement, and I know when I first read this treaty, when it became available a year ago last summer, it struck me on reading the section regarding employment with the Commission that of all of the groups covered, U.S. citizens and others by the treaty, that your group is the least protected in every respect that, in effect, you were almost left to the tender mercy of the Panamanian Government, and whatever they decided to do with you.

Is that a fair estimate?

Mr. HENRY. That's exactly true.

Mr. BAUMAN. Now, how is that consistent with the repeated argument in favor of turning over the canal to the Republic of Panama, that it should be run by Panamanians, that it's a Panamanian national resource? Why wouldn't the Government of the Republic of Panama be most concerned about retaining your operations and employment to the exclusion of all others?

You might want to get into some history here of the attitude of Canal employees who are Panamanian employees.

Mr. HENRY. Historically, the canal started or rather the construction of the canal was effected by the importation and the coming to Panama of thousands of people from the West Indies. Your records will indicate that many of them came out here under contracts, and I think these are the figures that most of the time

are used, but several of the thousands that were necessary just came on their own.

They represented for at least the first five decades the bulk of the people who made this operation a success in construction and in operation and in their maintenance. We, most of us, some of us were older, but we represent the offspring, second, third, some fourth generation of these people who subsequently assumed Panamanian nationality.

In 1955, with the Eisenhower-Remon Treaty the composition of the work force on the canal changed in that we had an increase in the number of Panamanians that were not of West Indian origin who began coming into the work force, and that's reflected basically in maybe the composition of the work force now.

This has caused a problem in nomenclature when we talk about Panamanian Panamanians, and Panama's aspiration and the aspirations of the citizens of Panama, because we would work for Panama. For the Panama Canal Company, who are citizens of the Republic of Panama, have throughout our lifetime again had our sustenance from the Panama Canal Company and, in effect, from the U.S. Government.

Mr. BAUMAN. Has your status been resented by other Panamanians do you think, generally?

Mr. HENRY. Well, yes, to the extent that we have been called also a privileged bunch or group of people, especially those of us who live within the Canal Zone, because our salaries for one are higher than those in Panama who would do the same thing for the Republic of Panama, and our living conditions are distinct in many cases to the average run of people who would work or rather in comparison to my counterpart who would live in Panama, and their conditions of living would be quite distinct to mine.

Mr. BAUMAN. Now, do you foresee the possibility with the open-ended nature of the employment article of the treaty that there would be a wholesale attempt to replace the people of Caribbean origin by the Government of Panama?

Mr. HENRY. There could be that possibility over a long period of time. Immediately I don't think that would be practical, because then somebody else gets trained in that expertise, but the possibility does exist.

Mr. BAUMAN. Has anyone given you any assurance or have there been any statements made by Government officials or the Government about your future status, which is rapidly approaching here on October 1?

Mr. HENRY. The terms of the treaty indicate that there are certain facets of the canal operation that will remain. Present employees of the canal enterprise have civil service retention rights which they will exercise in the RIF process. Now, the Canal Commission then will have these people as employees with their Federal rights of retention, even under the Panama Canal employment system.

There are some of us who will be working for the Department of Defense and we will also have our retention rights. So, it will be difficult to foresee that they could be arbitrarily removed. What you may have is that the replacements may be others.

Mr. BAUMAN. So in the absence of any specific statement regarding the implementation of article X, you are asking us to write into the implementing law guarantees that you have received in no other way.

Mr. HENRY. Right.

Mr. BAUMAN. Silence is what you have got.

Mr. HENRY. Right, and contrary to what Mr. Wyrough said we are not asking for the U.S. Government to guarantee any job to any non-U.S. citizen within the Federal Government.

We are asking for the opportunity to compete for a job, because the people we are displacing are young and generally they are going to be having less than 15 years service, but they are trained and they have expertise and they can compete. If they qualify and are received, then they will.

But we don't want to say, well, Mr. X worked for Panama Canal Company, he must get a job. We just want the opportunity to compete for that job.

Mr. BAUMAN. Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Lent?

Mr. LENT. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. Mr. Chairman, I think we each need a copy of the letter you received back from the administration. Are the non-U.S. citizen employees now members of the civil service retirement system?

Mr. HENRY. Right.

Mr. LOWRY. After the transition period how is that answered as far as continuation into the retirement system?

Mr. HENRY. The present employees who will continue with the Canal Commission or DOD will retain these Federal programs. New employees, new Panamanian or non-U.S. citizens, new Panamanian employees, according to the treaty, will participate in the social security system of Panama, which would have health and retirement benefits.

In other words, what I am concerned with is the fact that after the 30-month period the present non-U.S. citizen employees who are receiving medical benefits from the Gorgas and Coco Solo Hospitals will no longer be entitled to this.

We will have to participate in the Republic of Panama social security system. Now we are told we would keep our FEHBA, which is our Federal Health Insurance Plan.

But, unless the mechanism is set up where an independent and private enterprise can pay benefits within a system that is Government-operated, then we are running into a kind of shady area where there is a possibility that this system may require that you pay directly into the system, or that costs could be sufficiently prohibitive that it would be advisable to get out my Federal insurance policy and get into that.

Now, the answer I get to that and a lot of other things are affected because the Securia Social System is also a retirement system, and what happens to my Federal retirement? There is no

life insurance within that. What happens to my Federal life insurance?

Mr. LOWRY. Thank you. I think most of us concur you raise very grave questions that I know this committee is going to continue discussing. In the interest of time, Mr. Chairman, that is all.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. In the interest of time, Mr. Chairman, I will pass.

Mr. MURPHY. Governor?

Mr. EVANS. I have two brief questions.

Mr. MURPHY. Take your time. We have plenty of time.

Mr. EVANS. Do I understand from this discussion that there are in reality at least three types of Canal Zone employees:

One, Canal Zone employees who are U.S. citizens, whether they hold dual citizenship or not; canal employees who are Panamanians but come from descendants from the Caribbean Islands, and a third group who we might call Canal employees indigenous Panamanians?

Do you accept that?

Mr. HENRY. Yes, with a minor clarification, and we also have—I don't know the figures but it's a reduced number—we also have a reduced percentage of employees who are neither of those but maybe from some other country.

Mr. EVANS. Briefly, could you give me what percentage of the Canal employees who are non-U.S. citizens who live outside of the Canal Zone and therefore would not be controlled by some of the treaty provisions?

Mr. HENRY. Well, controlled?

Mr. EVANS. Those who are non-U.S. citizens who live outside of the canal.

Mr. HENRY. OK. First, there are some provisions that are going to affect all, like medical facilities. Every non-U.S. citizen employee now presently will have 2½ years for that.

Mr. EVANS. No; you mention someplace that approximately 40,000 employees, is that right?

Mr. HENRY. Yes.

Mr. EVANS. What percentage of those live outside of the canal?

Mr. HENRY. I would say, let's talk about the approximately 10,000 who are non-U.S. citizens, basically Panamanians. Approximately, let's say 8,000 live outside of the Canal Zone.

Mr. EVANS. I see, and the final question is—you may elect to answer or not to answer if you think it would not be good for you to answer—but are you suggesting or is it possible there might be a differential of treatment between the non-U.S. citizens based on their ethnicity?

Mr. HENRY. That possibility does exist.

Mr. EVANS. All right.

Thank you.

Mr. MURPHY. Thank you all very much. You have been most helpful.

Mr. HENRY. Thank you, Mr. Chairman.

Mr. MURPHY. Are Mr. Hannah and Mr. Hudson here, and Dan Douglass?

Could we take up your three groups tomorrow at about 1645?

Mrs. McCAULEY. Excuse me, Mr. Chairman. We come from the Atlantic side, which is 50 miles away. It takes 1 hour and 5 minutes.

Mr. HENRY. We should have heard you first.

Mrs. McCAULEY. If possible, we would like to be heard today.

Mr. MURPHY. All right.

Mr. Kenneth Hannah, Mr. Gary Hudson and Mrs. Victoria McCauley.

STATEMENTS OF KENNETH HANNAH, PRESIDENT, CRISTOBAL-MARGARITA-BRAZOS HEIGHTS CIVIC COUNCIL; GARY HUDSON, PRESIDENT, COCO SOLO-FRANCE FIELD CIVIC COUNCIL; VICTORIA McCAULEY, PRESIDENT, GATUN CIVIC COUNCIL

Mr. HUDSON. We will be as brief as possible.

We were first last week, so I think that's why they changed the order this week, to make it fair.

Mr. MURPHY. The only people who have ever complained to this committee about being first and last are the environmentalists. We usually try to accommodate people on a geographical basis.

Mr. HANNAH. Thank you.

Mr. HUDSON. Thank you. We appreciate it very much.

Welcome to the Canal Zone.

We appreciate this opportunity to present our views and concerns about this legislation. We also commend you for making the extra effort and sacrifice of time involved in coming to the Canal Zone to hear testimony.

My name is Gary W. Hudson and I am the president of the Coco Solo-France Field Civic Council. I have lived in the Canal Zone since 1969, and I am an elementary school teacher.

The civic council was established by the Canal Zone Code to serve as a means of aiding communication between the people of the Canal Zone towns and the administrators of the Company and Government. Today I am speaking for the towns of Coco Solo, France Field and Gatun, all Atlantic area communities.

Let me skip over to a couple of pages which would shorten this a little. On page 2, the Treaty guarantees that the U.S. citizen work force and their families continue to have certain community rights and services which should not be minimized. The assurances that we have received over the past 3 or 4 years must be complied with.

Our nonprofit organizations, such as churches and clubs are an extremely important part of our Canal Zone life. There are over 300 of these organizations. In the very near future, they may very well become extinct, not by the fact of their ability to operate legally, but by the fact that the cost of operating them could become prohibitive.

We would expect also that there would be fewer people in these clubs and churches because many of us will leave soon. Therefore, the per member cost of operating them will increase even more.

A recent survey of potential financial costs indicate that they will increase by a factor of 31 to 65 percent. Just the electric rate alone is expected to treble. With these tremendous increases, these organizations will effectively have to cease functioning.

This would certainly have an adverse impact on the quality of life we now have. This affects directly and indirectly every person who resides in the Canal Zone.

Many of the citizens of the Canal Zone question the good faith of the Department of Defense as to their operation of the Canal Zone College. While DOD has said they will operate the college, it is apparent that they do not wish to be saddled with the responsibility of doing so and will let it die in a very short time.

The single most serious concern that we Canal Zone residents face is the matter of our personal safety once we come under the jurisdiction of the Panamanian police and judicial system.

We have just received a copy of a report from the Organization of American States dated June 1978 and titled, "Report on the Situation of Human Rights in Panama."

This report documents that the Panamanian Government is guilty of violations of human rights in Panama.

Many of us will leave the Canal Zone rather than to have to live in constant fear of our personal safety and the safety of our families.

Many of us have sons and daughters that we feel would have to be restricted in their movement in the area because of the fear we as parents hold for their safety.

We have been relatively free and safe in the Canal Zone. With the phasing out of the Canal Zone Police Force, the burden for our personal safety and the safety of our property will become the responsibility of the Guardia Nacional. It is not that we doubt the ability of the Guardia Nacional to do their job, but come October 1 the control of people entering what was the Canal Zone and our housing areas will become more difficult because the Canal Zone will no longer exist.

The city of Colon adjacent to our communities has been experiencing a high rate of crimes against the person. Unemployment in Colon is very high and people not able to make a living are resorting to thievery.

The Canal Zone is ripe for plucking. Already they come by land and sea to break into our storage areas, houses, and steal from around our quarters. Soon the Guardia Nacional will have a much greater area of responsibility to patrol that will tax their ability to protect us as we feel we deserve.

At this time of much uncertainty, it is imperative that we be kept informed as decisions are made that affect our lives. There are those of us that wish to remain in the Canal Zone and the Republic of Panama, but we must be concerned for our families and futures and must have information so as to make rational decisions to plan for these futures.

In closing, our communities support the necessity of the legislation that is now before you. We recognize the need for speedy consideration of the bills for implementing the treaties.

We trust that you will give your best to ensure that we Americans will be treated fairly by our government and will be able to continue to live useful and productive lives in the service of our country here in Panama.

Thank you.

[The full statement follows:]

TESTIMONY—HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

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The Civic Council was established by the Canal Zone Code to serve as a means of aiding communication between the people of the Canal Zone towns and the administrators of the Company and Government. Today I am speaking for the towns of Coco Solo, France Field and Gatun, all Atlantic area communities.

We are concerned with matters of health, education, housing, commissaries and retail stores, grounds, and the police and judicial system under which we live. Essentially, we are interested in those things that affect the quality of life of the employees and their families in the Canal Zone.

First, we would like to make two specific points with reference to the legislation under consideration. Reference Title III, Chapter 1, Section 301 of the Administration bill that training programs to be applied uniformly to employees regardless of citizenship would be inconsistent with provisions of the Treaty concerning increased employment and training of Panamanians. We understand the need for this, but we feel there still must be opportunities for our own U.S. citizens to be included on the basis of a fair ratio. We ask that the terminology "increased employment and training" should not be interpreted so as to exclude United States citizens.

Second, with reference to Chapter 3, Section 341 on Postal Matters, we strongly believe that all U.S. citizens should continue indefinitely under the military postal system.

The treaty guarantees that the U.S. citizen workforce and their families continue to have certain community rights and services which should not be minimized. The assurances that we have received over the past three or four years must be complied with.

Our nonprofit organizations, such as churches and clubs are an extremely important part of our Canal Zone life. There are over three hundred of these organizations. In the very near future, they may very well become extinct, not by the fact of their ability to operate legally, but by the fact that the cost of operating them could become prohibitive. We would expect also that there would be fewer people in these clubs and churches because many of us will leave soon. Therefore, the per member cost of operating them will increase even more.

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In closing, our communities support the necessity of the legislation that is now before you. We recognize the need for speedy consideration of the bills for implementing the Treaties. We trust that you will give your best to insure that we Americans will be treated fairly by our government and will be able to continue to live useful and productive lives in the service of our country here in Panama.

Mr. MURPHY. Thank you, Mr. Hudson.

You mention a figure of 300 activities. Is that zone-wide?

Mr. HUDSON. That is zone-wide, and that includes churches, fraternal organizations, clubs, riding clubs, American Legions, and VFW's, et cetera.

Mr. MURPHY. Why would there be a 65 percent increase in the costs of operating a church?

Mr. HUDSON. The Company last week made a survey and they determined that meeting the licensing requirements, the social security requirements of Panama, the labor laws of Panama, and the tax laws of Panama, would cause this kind of an increase.

A large factor there would be the cost of the electricity, which is about three times what it costs us now to provide.

Mr. MURPHY. What about the churches?

Mr. HUDSON. The churches have pastors and they have employees that are hired who will automatically lose all of their purchase privileges. They will lose their rights of importation as they do now for their cars and their furniture. They will lose the ability to send their children to the Canal Zone schools tuition free.

It has not been determined yet, but it appears they will have to become tuition-paying parents for their children.

Mr. MURPHY. Do you have any specific remedies to ameliorate or correct the increased costs or problems you foresee?

Mr. HUDSON. In the matter of churches, that would be very difficult, except that through the binational committees a liberal undertaking or liberal interpretation of the laws of Panama or the treatment of these people would be one way of doing that. In other words, let them continue as they are now, because in order for the clubs to continue and the churches to continue it would be necessary that we can afford to operate these functions as we do now.

Mrs. MACCAULEY. Let me add, too, if they would be able to pay their electricity to the Commission instead of the Republic of Panama, I think this would be a great savings in their favor which would help them continue to operate.

Mr. MURPHY. What about social security for the employees?

Mr. HUDSON. I don't know how most of the pastors now provide for their own social security through the U.S. social security program. I do not know if a foreign national would be required to pay social security into the Panamanian social security system.

I believe employees of the church who are Panamanian nationals would probably come under the laws of Panama as also the ground

underneath the buildings would be subject to the licensing requirements of Panama. At this point we don't know what they are.

Mr. MURPHY. On the question of public safety, would you want more Guardia to be assigned or an extension of the dual patrols during the transition period, or what would be your recommendation?

Mr. HUDSON. I don't think there will be a problem with the dual patrols, and it is the hope I am sure of the Canal Company to maintain the same kind of level of force that the patrol is now at. But after the transition period when the Canal Zone police ceases to exist, we would hope that the Guardia would be able to maintain that level of control.

As you know, much of the land area, about 500 square miles, would come under their control, and that would require a large expenditure on their part, I would believe, to maintain that kind of a manpower.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. Mrs. MacCauley and gentlemen, we heard from the Pacific Civic Council earlier, and someone asked the question what input their association or the council had into the decisionmaking process during this transition period either to the Canal Zone Government or the corporation, and I believe the answer was that they didn't have.

Does your association have any ongoing dialog with people who are making decisions right now that will affect your lives?

Mr. HUDSON. I believe we do.

Mr. BONIOR. With whom?

Mr. HUDSON. With the U.S. part of the subcommittees. We have been invited to contact any one of the committee chairmen at any time and offer our input, on an informal basis.

Mr. BONIOR. You have done so, I assume?

Mr. HUDSON. Yes, we have asked them questions about what is going to be happening, and so forth. We have asked them to bring to Panama some of our concerns.

Mr. BONIOR. What do you think of the suggestion that was raised earlier about an ombudsman, for instance? My friends like to call it an ombudsman system.

Mr. HUDSON. We support that. We don't see a problem there. We think it would be helpful. Many people do have a feeling of insecurity or feeling of smallness compared to the total picture, and if we had a spokesman or a person that we could directly speak with about our problems and then if he did have some certain amount of power or authority, we feel that would help us in making 5 or 10 years from now a more stable community.

Mr. BONIOR. Where would you structure that particular person, under what agency, and what would you feel comfortable with?

Mr. HUDSON. I would feel comfortable if he were with the Commission.

Mrs. MACCAULEY. I believe it was Dr. Cheville who said, and I will reiterate, I don't think there are too many Canal Zone residents who will feel comfortable with someone who came from the State Department or U.S. Embassy. I think we would prefer to see this person in the structure of the Commission itself.

Mr. BONIOR. Thank you very much.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. Only one question I would address to any of you.

You make the statement here regarding the OAS report on human rights in Panama which I have had occasion to read, and it paints a rather dark picture of a military dictatorship that denies fundamental rights to its people, and that has been the history of the regime over most of the 10 years it has been in power.

But we have been informed repeatedly since we have been here that this is changed fundamentally. And this report was dated June 1978.

In your own experience, is there less harassment by the Guardia Nacional of Americans when they are out of the zone? Are there less problems of this nature? Has there been a change in the general attitude of the Government of Panama?

Mr. HUDSON. Through my own experience I have had completely fine relations with the police in Panama and the judicial system in Panama.

Mrs. MACCAULEY. I would like to say I have seen no change at all, and speaking in that report I think it quotes or makes the point on page 1141 of the OAS report under other views they emphasize continued progress is uncertain because of the lack of an institutional system to implement it.

I can't agree with it more.

Mr. BAUMAN. Is there disagreement between you and Mr. Hudson?

Mrs. MACCAULEY. Yes; I believe there is.

Mr. HUDSON. I am speaking from my own experience, and I have not personally had any problem.

Mr. BAUMAN. But from your general observation have you noticed a change?

Mr. HUDSON. From a general observation, from the U.S. citizen employees in the Canal Zone, I don't know of any problems recently that we can cite.

Mr. BAUMAN. But does that mean there was a change in your opinion from the past?

Mr. HUDSON. Yes.

Mr. BAUMAN. That is all, Mr. Chairman.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. One question, Mr. Chairman.

Mr. Hudson, can you tell me what the average teacher salary is here?

Mr. HUDSON. No; I cannot tell you what the average teacher salary is.

Mr. WYATT. What is the top and bottom?

Mr. HUDSON. The top is about \$29,000 and the bottom starts about \$10,000.

Mr. WYATT. Thank you.

That is all, Mr. Chairman.

Mr. MURPHY. Mr. Lent?

Mr. LENT. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. I would just like to ask this group if they would agree with the dialog that the first civic group had with us, and most of the concept. You share the same problems except for you are geographically on one side of the Isthmus as opposed to the other civic organization, and perhaps maybe you might have a little bit more of a problem because of the economic impacted area you are living around.

Would that be a correct assumption?

Mr. HUDSON. That would be a correct assumption. We are 100 miles from town—round trip—and I think that makes a big difference in how we meet the needs in our own lives.

Mr. CARNEY. And the Panamanian area around the zone or directly abutting you, the zone where you come from has more economic problems than the other side?

Mr. HUDSON. A population probably of 60,000 to 80,000 people, and the unemployment rate I believe is in the 30 percent range and up.

Mr. CARNEY. And basically you would agree with the other testimony?

Mr. HUDSON. Yes.

Mr. CARNEY. Thank you very much.

No further questions, Mr. Chairman.

Mr. HUDSON. Mr. Chairman, Mr. Hannah has some brief comments to make.

Mr. MURPHY. Mr. Hannah?

Mr. HANNAH. Yes, Mr. Chairman.

Welcome, Mr. Chairman and members of the committee.

My name is Kenneth Hannah and I am president of the Cristobal-Margarita-Brazos Heights Civic Council.

I would like to briefly summarize some things that concern our council and citizens on the Atlantic side.

First of all, our council places top priority on the retirement bills, the employment retirement bill.

Second, it reemphasizes the importance of the 25-percent differential to all U.S. citizens, not just the 15 percent that is now being paid only to the one who is head of household, but to all U.S. citizen employees, as it was originally done.

The second thing that I would like to point out, our council recommends that through implementing legislation that the taxation of U.S. citizens who live in the zone after October 1 be clarified. We don't know whether we will pay U.S. taxes or not.

We think we know, but it should be definitely clarified in the treaty.

Since our post offices will be established in military reservations, most of the U.S. citizens who populate the Canal will be housed in the Commission areas, and a convenience like the morning newspaper would be real good if we can keep the post office drop boxes within the Commission itself rather than go 5 or 8 miles to mail a letter.

It's a small convenience but a very important one.

Our council recommends that it be guaranteed in writing or through implementing legislation a Bureau of Complaints, a very similar organization was mentioned before, and that it be composed

of U.S. citizens who have direct contact with the U.S. Embassy, U.S. Congress, and U.S. Canal Commission.

Our community is vitally concerned about the physical security of its citizens, particularly as the numbers diminish. We are recommending that somewhere along the line, maybe as we get smaller in number in each Commission area, that we could be placed in a compound or group in one area where we have U.S. patrol within that one area.

We are really concerned about the physical safety and this is a suggested recommendation.

Small as it may seem, a lot of us have appliances who have lived here for a number of years, air-conditioners, refrigerators, and other things that we have bought from the canal commissaries, and we hope the warranties on these appliances will be continued.

The quality of life has been very beautifully illustrated by the Pacific Civic Council, and I don't think one could improve on our needs for the continuation of churches and fraternal organizations and recreational facilities.

Two things that have not been mentioned earlier I would like to mention.

One of them is the Public Law 86-91, which applies to Department of Defense schools, which says in the main that U.S. citizen children of U.S. dependents overseas will be taught by U.S. citizens, and we are very much concerned in the zone, particularly as a U.S. community living in a foreign country, because the United States and the continuance of our culture in the schools is a vestige of the people, and I think it will affect the retention of workers more than any one other factor.

Another thing I would like to point out, our Council recommends also H.R. 7761, which is now defunct, but the language of that bill, if it is put in the implementing legislation will stabilize the schools, it will give the teachers in the Canal Zone the right to buy a State-side service, Federal and, therefore, they would stay in the canal area or present area and continue their work.

It's very important that the stability of schools be maintained.

Other things that have been mentioned earlier concerning the quality of life we believe these things to be very important to us and the U.S. taxpayers.

Thank you.

[Mr. Hannah's statement follows:]

STATEMENT BY MR. HANNAH, CRISTOBAL, MARGARITA, BRAZOS HEIGHTS CIVIC COUNCIL

Gentlemen: Welcome to the Canal Zone. My name is Kenneth H. Hannah, President of the Cristobal, Margarita, Brazos Heights Civic Council.

The Margarita Civic Council believes that the recommended implementing legislation on employee retirement is better than the present plan. However, we recommend that the retirement computation after October 1, 1979, be increased to 5 percent. We also recommend that the overseas differential be increased to 25 percent and given to all U.S. citizens.

We also recommend that implementing legislation be modified to confirm the literal meaning and interpretation of Article XV (Taxation) of the "Agreement in Implementation of Article III of the Panama Canal Treaty" which already has Presidential and Senatorial acceptance, and which says that "United States Citizen employees and dependents shall be exempt from any taxes, fees, or other charges on income received as a result of their work for the Commission. Similarly, they shall be exempt from payment of taxes, fees, or other charges on income derived from

sources outside the Republic of Panama." We feel that this article binds the United States no less than it does Panama and should be recognized as binding to the U.S. in an amendment to implementing legislation now being considered by Congress.

We also recommend in the implementing legislation U.S. Post Office drop boxes within each Commission Townsite. Further, we recommend the continuation of our present health insurances and at the present rates along with our present hospital facilities.

We recommend a "Bureau of Complaints," composed of U.S. citizens in each townsite. This Bureau of Complaints should have direct access to the Canal Commission Board, U.S. Embassy and the U.S. Congress.

It is recommended that all U.S. citizens in the Canal Zone be given priority hiring and transfer rights into the U.S. system. This should also apply to the hiring and transferring of U.S. citizen teachers into the Washington, D.C. School System.

Since the DODDS Schools are financed directly by U.S. taxpayers, we recommend the application of Public Law 86-91. It applies to U.S. Citizens with U.S. degrees to teach U.S. Dependent pupils of U.S. citizens overseas. The only exception that is made is in the area of teaching the native language of the native country in which U.S. citizens reside.

The Margarita Civic Council approves the adoption of H.R. 7761 (now defunct). It approves all provisions within this resolution. This bill is commonly known as the teacher buy-in bill for purposes of retirement, up to ten years service. Since Canal Zone Teachers are based on the Washington, D.C. Wage Base and since the Washington, D.C. Teachers have had this buy-in program since 1920, we feel it should apply equally here. The Canal Zone Teachers have only one half of this privilege. They can transfer into the Canal Zone Teaching System up to ten years, but for the purpose of salary steps only, not retirement benefits. This bill would stabilize the U.S. School System here and would therefore enhance the education of U.S. students. We also recommend the transfer of the railroad service to be combined with that of the Canal Zone Government.

Physical security and fire protection is important to the U.S. citizens who remain within the Canal Commission area. As the U.S. population decreases, we recommend that U.S. citizens live within a compound in each Commission Townsite with a U.S. Security Patrol twenty-four hours per day.

We recommend that the U.S. citizen, within the Canal Commission area, have in addition to a "Bureau of Complaints," direct access to a liaison person within the U.S. Embassy. This immediate service is of vital importance to our citizenry.

As the costs of living increases within the Canal Commission Area, we recommend in addition to each citizen receiving the full 25 percent overseas differential, that an additional cost of living allowance be given to off-set cost conditions.

It is recommended that all of the Warranties on all products purchased from the Canal Zone Government Company be continued under the Canal Commission. It is further recommended that guarantee repair, replacement, of all purchased products and services be further guaranteed with a non-charged installation of substitute items while the warranty item is in the process of repair. (i.e. free installation of substitute car battery, air conditioner, etc. while warranty item is under repair.

The Council recommends that a high standard of the quality of life facility program be established and maintained by the Canal Commission for the life of the treaty. Such facilities are to include Civic Councils, churches, fraternal organizations clubs, swimming pools, bowling alleys, tennis courts, youth centers, skating rinks, movie theatres, gun clubs, saddle clubs, boating facilities, hobby shops, libraries, sport facilities for both youth and adults, bazaars, flea markets, and any other not herein mentioned.

The above mentioned recommendations, we believe, would contribute to the efficient operation of the Canal which we assume is one of your PRIME objectives. We would further like to call your attention to the fact that this treaty is not of the choosing of the American people, either those U.S. Citizens on the mainland, nor those residing and employed in the Canal Zone, and therefore any signatory to the treaty itself, or to implementing legislation of this treaty is in direct violation of U.S. Constitutional Rights of U.S. citizens here who in effect are having their employment services transferred to a foreign government. You may say we have the option of leaving. We do not have this option without committing economic suicidal destruction, thus we cannot call this a genuine "free choice."

We believe that it is high time that our elected representatives in Congress place top priority on the welfare of the "tax-paying" citizen.

We cordially invite you to the Atlantic Area of the Canal Zone so that you may say you have fully visited the entire Canal Zone, and if you wish we will make it

possible for you to discuss these concerns and recommendations with our people.

Thank you,

KENNETH H. HANNAH,
President.

E. M. KENNEDY,
First Vice President.

CLAIRE COOPER,
Second Vice President.

Mr. MURPHY. Thank you, Mr. Hannah.

Mr. BONIOR. Mr. Chairman?

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. I ask the committee to indulge me in just one brief dialog with Mr. Hudson.

Mr. HUDSON, what do you teach?

Mr. HUDSON. I teach sixth grade on the Atlantic side side of the Canal Zone.

Mr. BONIOR. Over the last year and a half, the last 2 years, what has been the reaction of your students to what has been happening in Panama?

Mr. HUDSON. I have taught the fourth, fifth, and sixth grades in the last 3 years, so I have just come along with these children. The reaction has not been negative; it has not been positive, it's just been kind of neutral.

Mr. BONIOR. Is there an awareness?

Mr. HUDSON. There is an awareness because of their parents' concerns. Now, I notice this because I hear comments, and I know the child could not develop that kind of a comment on his own. The parents will say something and then the children repeat it to me. For example, "well, what is going to happen next?" "We are going to leave here very soon if this goes through." "We are going to leave." Those kinds of comments.

Mr. BONIOR. Has that created, have you noticed, any increase in educational problems some of your students are having because of the situation?

Mr. HUDSON. I don't think so.

Mr. BONIOR. Thank you.

Mr. MURPHY. Governor?

Mr. EVANS. No questions.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. Thank you, Mr. Chairman.

Mr. Hudson, how long have you been teaching in the Canal Zone?

Mr. HUDSON. Ten years.

Mr. CARNEY. Thank you.

Mr. HUDSON. May I make one more comment?

Somebody mentioned a while ago to the Latin American community about the purchase of homes that come in the jurisdiction of Panama. One year ago, at this time, in this very room, Terrence Todman was sitting here and he spoke to us through Gabriel Lewis Galindo, stating that the U.S. citizens will have the same opportunity as Panamanians to purchase the houses they are living in.

To this date and through questions and requests, we have not heard one single comment to that extent. I am just wondering if it has come to your attention?

Mr. MURPHY. We have no information through official U.S. Government channels as to that. Of course, Mr. Todman is now in

Spain and not an Inter-American Assistant Secretary of State. But we will communicate with you on it.

Mr. HUDSON. Thank you very much.

Mr. MURPHY. Thank you, Mrs. MacCauley and gentlemen.

The Canal Zone Bar Association, Mr. Daniel Douglass; Mr. De Castro; James Dunworth; Patricia Lindley; Marcos Ostrander, and Allen Ostrander.

We wanted to give the Canal Zone its due, and felt if you would come back tomorrow it would be more advantageous for you. But I understand Mr. De Castro assisted in the writing of the Panama Canal Zone Code and, in that interest and so that the members of the panel of the committee could have the opportunity to discuss this with them, I thought we would take some time today and at least begin.

Mr. Douglass?

STATEMENTS OF DANIEL D. DOUGLASS, CANAL ZONE BAR ASSOCIATION; WOODROW DE CASTRO, DE CASTRO AND ROBLES; JAMES DUNWORTH; PATRICIA LINDLEY, PRESIDENT OF THE CANAL ZONE BAR ASSOCIATION; MARCOS OSTRANDER, VICE PRESIDENT OF THE CANAL ZONE BAR ASSOCIATION; ALLEN OSTRANDER, AND JAMES DUNWORTH, GENERAL COUNSEL'S OFFICE

Mr. DOUGLASS. Mr. Chairman, Honorable Members of the House and this committee, ladies and gentlemen, I have been asked to lend some brevity and/or to speak more rapidly. I shall do both.

But before I do that I would like to introduce my associates.

From my right and your left Mr. De Castro, senior partner of the firm of De Castro and Robles; Patricia Lindley, presently president of the Canal Zone Bar Association, and with the General Counsel's Office of the Panama Canal Company; Mr. Marcos Ostrander, junior partner of the law firm of Allen and Ostrander, currently vice president of the Canal Zone Bar Association, and Mr. Jim Dunworth. Jim is with the General Counsel's Office.

As former president of the Canal Zone Bar Association and initiating correspondence, I have been asked to be spokesman.

We are privileged to have this opportunity to address the committee briefly. The committee will note that we have prepared no text. We were notified last Friday we would be given this opportunity, but for the sake of brevity and for your information a text will be provided before March 31, which is, as we understand it, the cutoff date.

We have been asked to address ourselves to the House bills 111 and 1716, both implementing devices intended to effect the spirit and intent of the treaty.

Certain limitations we understand are on the legislative capabilities and some of the comments may address themselves to other than legislative capabilities; that is to say, some may be dealt with through understandings, memos, or even address themselves to the potential legislation of the Republic of Panama.

It is also important, of course, to note that both bills are primarily designed to protect the employee and to serve the benefit of the transition in that regard.

We have the added advantage of being familiar with the private sector. It is clear from article XI of the treaty that the territorial jurisdiction *de facto* and *de jure* are going to change. The U.S. laws will conform or be changed in some fashion to those of the Republic of Panama and the territorial jurisdiction the Republic of Panama will make applicable. It's clearly contemplated that the closing of courts is on the horizon.

In the implementing legislation, in both packages as well as the treaty, it is obvious that on October 1 of this year they will enter into force and that on March 1 of 1982 the three courts in the Canal Zone, that is to say the U.S. District Court for the District of the Canal Zone, and that is, of course, a territorial court in concept rather than a constitutional district court, and the two main magistrates' court, the district court. Since you have discussed it earlier today, I should go into it a little bit.

The district court is a singular court sitting in two divisions, the Cristobal and Balboa divisions. The legislation addresses the problems that may or may not arise from the fact there are two divisions as well contemplated that will be handled by rules of the court.

We would like essentially to agree with the comments made by the Pacific Civil Council who did take up the issue of the magistrates courts' closure with the committee earlier this morning.

To reiterate some of the positions, the original jurisdiction of the magistrates court in the Canal Zone is misdemeanors, up to 6 months, small claims up to \$500, and preliminary hearings. Preliminary hearings, of course, I have classified under original jurisdiction, and that is a misdemeanor.

The original jurisdiction is vested in the district court and preliminary hearings are conducted in the magistrate court pursuant to the statute.

Both packages, however, provide for the gradual withdrawal and eventual closure of the magistrates' courts, and apparently contemplate those in advance of the district court. With that we have little trouble.

As a matter of fact, it may be a reality before the legislation. However, it is apparent in section 407(c)(4) of H.R. 1716 and in section 15, 16(c)(5) of H.R. 111 that preliminary hearings may be precluded by this action.

In that vein and in address to a question asked earlier, the Supreme Court of the United States has held, and while we think that the position in *Gerstein v. Pugh*, 1975 case 420-U.S. 103 may be dispositive of that, certainly there are other cases since and before that hold that a preliminary hearing is a guaranteed right flowing from the fourth amendment.

Whether the fourth amendment may or may not be applicable in the Canal Zone as its constitutional form or as restated in 131 of the Canal Zone Code we doubt makes much difference. The real point of the matter is the spirit and intent of the Treaty is to adhere to the Constitution of the United States and its rights, its basic guarantees.

In that sense and in the sense of the Supreme Court position we too agree that preliminary hearings should be provided for.

In the absence of provision for the magistrate court handling the preliminary hearing they should be entertainable by the district court to preclude the lengthy incarceration of the accused.

There is a claims package presented in H.R. 111 which merits a brief comment. This is an apparent revision designed to go to the present 1951 state of affairs of the Panama Canal Company and its antecedents.

In that provision, as spelled out, a specific waiver of sovereign immunity is made available with a \$60,000 limitation for accidents that would occur in the canal but outside of the locks, the only alternate to exceed \$60,000 being by private bill.

This, in addition, other tort actions would be received as administrative claims, with again a pay limitation of \$60,000. As to accidents occurring in the locks, it would be difficult to say that there is any disparity between that and that which appears in 1716 or as currently exists.

Two things strike the bar association in this regard: One is that \$60,000 in the instance of accidents involving major vessels involved in modern day commerce may not reach very far. Therefore, we see it as, and I believe the statistics are available on this subject, but we do not maintain those statistics, they are maintained by the Canal Zone Company, however, in which I am advised that \$60,000 is a figure which is surpassed in by far the majority of cases.

In addition to which we have a 28-year history of having handled these matters through the administrative claims action with the wavier extending to filing a lawsuit in courts.

As this committee well knows, both the District Court for the District of Columbia and the Eastern District of the State of Louisiana have been made available for judicial relief for accidents that would occur in the canal or other actions to be taken against the Panama Canal Commission.

There is a discrepancy in terms of the jurisdiction of the courts that will remain through the transition period. Neither of the two legislative packages offer definitive terms for this and a perusal of the treaty leads one to the conclusion that it may be unanswered as yet and may require at this point a judicial analysis.

Jurisdiction apparently attaches to cases after October of 1979 only if the case was filed before October 1 of 1979. Jurisdiction is, therefore, established over the case, but one wonders whether or not personal jurisdiction or jurisdiction for attachment or execution levying against property for obtaining subpoenas.

There is no clear line of demarcation as to the authority and powers remaining vested in the U.S. Marshals under the direction of the judge of the district court.

Let me break those down one at a time:

Personal jurisdiction: We know that we can acquire no personal jurisdiction over new cases after October 1, 1979. As has been pointed out earlier this morning, this court is a court of original jurisdiction, first instance, and it is not in the nature of a district court in the United States.

It serves this community in every aspect of the law; domestic relations is one of those aspects that affects this community.

Orders to show cause to bring a person into court are apparently precluded by the treaty, and they are not dealt with in the legislative terms. Motions such as motions to modify when necessary, to bring a case that has continuing jurisdiction in the court in any event, whether the jurisdiction was vested by the treaty or not, a motion to modify would require the reinstatement of that case and jurisdiction to be vested.

That would be fine, save for process, which apparently cannot be obtained. Most of these areas are domestic areas and I don't deny that in the area of personal jurisdiction that is by and large the problem.

Property execution is very obvious. Attachments may be levied both before and after judgments. Before judgments, after a case is pending it is possible, particularly in view of the current tranguency of the Canal Zone, it may well be that if from time to time defendants or plaintiffs in actions depart one would want to ensure that attachment would be available.

There is no provision which at this point permits attachments. The same holds true for a post judgment attachment, that is to say if one had a judgment against a judgment debtor and it was to be levelled against that person's property, there is no authority fixed whereby a Marshall, at least within the jurisdiction available, would have any authority to do that.

Garnishment is something that is particulalry important because it is provided in 1716, at least by implication in section 208(3)(b), which apparently opens the door. While it says that the Panama Canal Commission is not subject for suit, it opens the door and says that it shall garnish in accordance with other applicable laws. The applicable law as it relates to most of this community and most communities that have Federal employees is section 659 of title 42, United States Code, relating to garnishment in relation to support and maintenance.

This is a particularly difficult problem in the Canal Zone, because if the Panamanian court would entertain and certainly they will entertain Canal Zone judgments for purposes of execution, that would be fine, except that 42 U.S.C. 659 prohibits the entertaining of an execution on a foreign judgment unless the United States enjoys a reciprocal agreement with that foreign entity for the recognition of foreign judgments.

Panama and the United States do not enjoy a reciprocal agreement relating to foreign judgments.

It has been suggested that the Commission could administrative-ly process garnishment actions unilaterally without exposing the Commission further than the intent of 208(3). That is a possibility and would still comply with the intent and mandate that attachments and executions may be levelled under appropriate American laws, and that appropriate American law is as I have indicated.

Panamanian executions in the zone in general are possible. That is to say the zone as we know it today. This is possible under relatively inexpensive process. A judgment must be taken before the Supreme Court of the Republic. The difficulty there is that we have a long arm statute at 5 Canal Zone Code 170, in addition to which we have those cases in which the Court takes cognizance and jurisdiction over the subject matter, such as in a divorce which

might be obtained by publication and that is then resulting, of course, in a default judgment.

Default judgments, default foreign judgments are not recognized by the Panamanian courts.

Subpenas post other problems about which I spoke, and in the interest of time I think I need say very little further on that.

We are concerned with the lack of definitive, concurrency of jurisdiction, exclusivity of jurisdiction, the fact that civil laws may remain in full force and effect, and we may have civil laws from two jurisdictions simultaneously in full force and effect.

We have a larger American community here who have for years, of course, adhered to and been sponsored by the United States Government and its laws. Its contracts, which have been let under the laws that are applicable now, will stand in a different stead under the laws after October 1, 1979.

There will be wills, there will be probate matters, in testate, succession matters; labor matters have already been discussed somewhat today. And in discussing the inconsistencies between the Fair Labor Standards Act and the *Codigo de Trabajo* of Panama, the facilities of both will be available unless there is some way to sever the continuity of that.

Mr. MURPHY. Mr. Douglass, we are going to take your brief up with the Committee on the Judiciary when we have it in toto, and we would hope we would have it before March 31. I see you have here a pretty comprehensive and detailed statement of the legal questions involved and it would be subject to the Judiciary Committee's deliberation and we would like to get it to their counsels.

Mr. DOUGLASS. We would certainly be willing to accelerate our time schedule and try to provide a full copy of the text of our thoughts on these varying subject areas at the earliest opportunity.

Unfortunately, I personally am leaving town Sunday, but in my absence I am surrounded by very able people, as the committee can see, and I am sure we will be able to put a package together I would say within a couple of weeks.

As I said, I didn't intend to come without one, but we were short on time ourselves, and I will provide the committee with a report as soon as we can.

Mr. MURPHY. OK.

[The report follows:]

CANAL ZONE BAR ASSOCIATION,
Balboa Heights, Canal Zone, March 26, 1979.

Mr. JOHN M. MURPHY,
Chairman, Merchant Marine and Fisheries Committee, Longworth House Office Building, Washington, D.C.

DEAR REPRESENTATIVE MURPHY: The attached document represents the views and recommendations of the Canal Zone Bar Association regarding the Panama Canal Treaties implementing legislation, and supplements the oral testimony given by Daniel D. Douglass, Esq., spokesman for the Association, at a hearing before your Committee, held at Balboa, Canal Zone on February 23, 1979.

On behalf of the Association, I request that this document be included in the record of that hearing so that it can accompany Mr. Douglass' oral testimony.

As we indicated previously, the Bar Association was never consulted by Administration Officials, either during the treaty negotiations, or prior to formulation of the treaty implementing legislation. Nevertheless, it is our hope that this document will be of some value to you and the members of your Committee, and members of other committees with subject matter jurisdiction in the areas discussed, so that over-

sights in both the treaties and the implementing legislation can be remedied prior to October 1, 1979.

If myself or any other member of the Bar Association can be of any further assistance please do not hesitate to ask.

Very truly yours,

PATRICIA J. LINDLEY, *President.*

Attachment.

SUPPLEMENTAL TESTIMONY OF THE CANAL ZONE BAR ASSOCIATION BEFORE THE
HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE

I. INTRODUCTION

The following constitutes the Canal Zone Bar Association's views and recommendations regarding the Panama Canal Treaties implementing legislation, and supplements the oral testimony given by Daniel D. Douglass, Esq., spokesman for the Association, at a hearing before the House Merchant Marine and Fisheries Committee, held at Balboa, Canal Zone on February 23, 1979.

II. LEGAL ISSUES WHICH CAN BE REMEDIED BY THE CONGRESS

A. Preliminary hearings

Both draft bills provide that one or both Canal Zone Magistrate Courts may be abolished prior to the end of the transition period if the workload is insufficient. If both Magistrate Courts are abolished, the jurisdiction theretofore exercised by them will be exercised by the District Court. (Sec. 1516 of H.R. 111 and Sec. 407 of H.R. 1716.) The last paragraph of the section dealing with the abolition of the Magistrate Courts appears to dispense with preliminary hearing if there is not a Magistrate Court to hold such hearings. The elimination of preliminary hearings is objectionable on legal and policy grounds. The Supreme Court has held that under the Fourth Amendment, a judicial determination of probable cause is required prior to lengthy pretrial confinement. *Gerstein v. Pugh*, 420 U.S. 103, 114, 95 S. Ct. 854, 863 (1975). While the Fourth Amendment has been held not to apply of its own force in the Canal Zone, it has a statutory counterpart in effect, namely 1 C.Z.C. § 31(4), 76A Stat. 2, which prohibits unreasonable searches and seizures. Since the Canal Zone counterpart of the Fourth Amendment is merely a statute, it could be abrogated by a later statute. Moreover, if Congress were to specifically repeal section 31 there is little doubt that such repeal would be effective. However, the proposed legislation in this case does not specifically repeal the guarantees of 1 C.Z.C. § 31, but abrogates a protection which, according to the Supreme Court, is a necessary element of the prohibition against unreasonable search and seizure. This inconsistency between § 31 and the provision of the treaty implementing legislation would certainly place a cloud over the validity of any criminal conviction obtained after denial of a preliminary hearing, if lengthy pretrial confinement were involved. Furthermore, the proposed legislation unnecessarily removes a right presently afforded to criminal defendants. Should the preliminary hearings be retained and conducted by the District Judge, a further question would arise as to the degree of objectivity which would be exercised by a Judge who adjudicated criminal cases in which he has previously been the decisionmaker in the preliminary hearing.

It is therefore recommended that the provision permitting elimination of the Magistrate's courts be revised to permit elimination of one, but not both courts.

B. Claims procedures

The Bar Association recommends adoption of the maritime claims procedures set forth in the Administration Bill, H.R. 1716, rather than those in the alternate bill, H.R. 111. The claims procedure set forth in H.R. 1716 is essentially the same as the present procedure in which an administrative claim must first be filed, and a claimant dissatisfied with the administrative adjustment of a claim, may sue in Federal court. It is submitted that such a procedure is fair, speedy and efficient. The Murphy bill (H.R. 111) would provide for resolution of claims in excess of \$60,000 by private bill. Such a procedure is incongruous, considering the waivers of sovereign immunity granted in other Federal statutes. Furthermore, it is difficult to say whether claims can be adjudicated fairly, speedily, and efficiently by such a procedure.

C. Continuing jurisdiction (domestic relations)

Pursuant to Article XI of the Panama Canal Treaty, the Courts of the United States of America may continue to function, in a limited manner, during the transition period. While there will be no jurisdiction of new civil cases, section 6 of

that article provides that full jurisdiction shall be retained to dispose of civil cases already instituted and pending.

A court's jurisdiction over a case continues until the case has been dismissed or the judgment satisfied. In some cases of an equitable nature, this jurisdiction continues indefinitely in order to enforce the court's decrees or, if necessary, to modify them. The most common equitable decrees requiring continuing jurisdiction are those granted in domestic relations cases. When a support decree is not honored, the party entitled to support or otherwise aggrieved, may return to the court which issued the decree and obtain relief without the necessity of commencing a new action and reacquiring personal jurisdiction over the delinquent party. When the District Court in the Canal Zone is closed, parties entitled to relief under decrees of that court will be unable to enforce those decrees without commencing a new suit elsewhere. Such an action presents several complications that would not be encountered if the Canal Zone District Court's continuing jurisdiction could be exercised. Instead of simply applying for and obtaining a modification order, the party may be faced with the necessity of commencing a new action in a court having subject matter jurisdiction and then attempting to obtain personal jurisdiction over a party who might be outside the jurisdiction of the new forum.

In order to provide continuing legal credence to orders of the C.Z. District Court, it is suggested that prior to closing the court, its jurisdiction over cases be transferred to some convenient forum in the U.S. (e.g., Washington, D.C., Miami, or New Orleans). In order to facilitate the transferee court's handling of these cases, and to provide a second depository of Canal Zone court records, it is suggested that the statute transferring jurisdiction also provide for the transfer of microfilm copies of all records of the U.S. District Court for the District of the Canal Zone.

D. Garnishment of Federal wages under Panamanian decrees

The Government of the United States has waived its sovereign immunity to permit the garnishment of the wages of a Federal employee for the purpose of alimony and child support. 42 U.S.C. § 659. This statute provides that Federal agencies shall honor domestic garnishment decrees, and decrees from countries which have entered into an agreement with the United States providing for reciprocal recognition of garnishment orders in child support and alimony cases. While there is no such agreement between the Republic of Panama and the United States, it appears that the Administration Bill would allow garnishment pursuant to Panamanian court orders if such an agreement were in effect. Inasmuch as Article XI, section 6, of the Panama Canal Treaty specifically precludes the U.S. District Court for the District of the Canal Zone from exercising jurisdiction over new private civil actions, United States citizens serving in the military and those employed by the numerous Federal agencies in this locality will have to resort to the Panamanian courts for separations, divorces and similar decrees. Garnishment orders based on Panamanian decrees cannot presently be honored by Federal agencies on the Isthmus, and upon implementation of the treaty there will be no method by which garnishment can be commenced on behalf of a spouse or child in situations in which a Federal employee fails to honor a decree ordering alimony or child support.

It is suggested that Congress authorize U.S. agencies on the Isthmus to administratively honor Panamanian court orders for garnishment of wages to pay alimony and child support. Such a statute could allow for administrative processing of such orders without subjecting the agency to the jurisdiction of Panama's courts.

III. PROBLEM AREAS WHICH REQUIRE REMEDIAL ACTION BUT FOR WHICH NO SOLUTION IS OFFERED

A. Collection of damages on judgments not satisfied prior to closure of the court

If a judgment is rendered by the Canal Zone District Court which remains unsatisfied upon the closure of the court, a suit upon the Canal Zone judgment will have to be filed in Panama in order to compel satisfaction of the judgment. It is the understanding of the Bar Association that Panama does not recognize personal jurisdiction acquired by other than service of process upon the party within the jurisdiction. Accordingly "long arm" jurisdiction is not recognized, and a Panamanian court will look behind a foreign judgment to determine whether jurisdictional requirements have been met. As a consequence, certain judgments of the Canal Zone District Court would not be honored by the Panamanian courts (e.g., judgments in cases in which jurisdiction was obtained by publication or under the Canal Zone nonresident motorist statute, 5 C.Z.C. § 170).

A possible solution to this problem is an agreement between the United States and the Republic of Panama concerning the recognition of judgments.

B. Status of businesses, professional practitioners and nonprofit organizations during the transition period and after

Article IX(2) of the Panama Canal Treaty provides that natural or juridical persons engaged in business or nonprofit activities in the former Canal Zone, may continue such business or activities under the same terms and conditions for a thirty-month transition period. It is the understanding of the Bar Association that there is a certain amount of unease among businessmen, professionals, and nonprofit organizations now operating in the Canal Zone because requirements to be prescribed by Panama for operating during the transition period are uncertain, and because Panama may attempt retroactively to apply Panamanian tax law to those individuals and organizations. Some business entities report the receipt of retroactive tax bills from the authorities of the Republic of Panama. Should severe financial hardship result from the demands of the Panamanian Government (see compliance list furnished by the bi-national working group to nonprofit organizations) many churches (of all denominations), fraternal organizations (such as VFW and American Legion), and service organizations (such as Scout troops) will be forced to cease operation.

C. Enforcement of subpoenas, orders to show cause and empaneling of juries after October 1, 1979

Article XI, section 6 of the Panama Canal Treaty provides that the United States District Court in the Canal Zone shall retain full jurisdiction during the transition period to dispose of any civil cases already instituted and pending before the court prior to entry into force. The court will be of little value, however, if personal jurisdiction cannot be obtained over defendants, if witnesses cannot be compelled to attend proceedings, if juries cannot be empaneled and if judgments cannot be executed. The power of the sovereign is needed to compel the unwilling to participate in the legal process. On October 1, 1979, sovereignty in the Canal Zone will pass to the Republic of Panama. After this date the U.S. District Court will have no power to compel participation of the parties to a lawsuit (e.g., no means of enforcing subpoenas or effecting valid service).

Presently, Public Law 90-274, the Jury Selection and Service Act of 1968, provides the judicial machinery whereby each United States District Court shall devise and place into operation a written plan for selection of juries in compliance with the provisions of the Act. It requires that such juries be selected at random from a fair cross section of the community in the district or division wherein the court convenes. The current plan of the Canal Zone District Court provides that the jury wheel be comprised of names of U.S. citizen residents of the Canal Zone furnished by the personnel offices of the Canal Zone Government, Panama Canal Company, Army, Navy, Air Force, other U.S. governmental agencies and private agencies operating in the Canal Zone. (Canal Zone District Court Rule 4.1) Neither the 1977 Treaty, nor the proposed implementing legislation contains any statement defining the Courts' district or community upon cessation of the existence of the Canal Zone. Furthermore, section 1864(b) of the Jury Selection and Service Act provides that one summoned for jury duty who fails to show good cause for noncompliance with a summons may be fined or imprisoned. It does not appear that the court will retain its power to summon potential jurors or to enforce summonses unless the potential juror voluntarily appears before the court. Neither the treaties nor either of the proposed bills addresses these issues. It appears that practical problems such as those pointed out above will impair the court in exercising the "full" jurisdiction set forth in the treaty.

D. Treaty rights guaranteed to U.S. citizen criminal defendants

Article IX of the Panama Canal Treaty guarantees certain rights, similar to U.S. Constitutional rights, to U.S. citizens accused of crimes in the Republic of Panama after October 1, 1979. There seems to be some question as to whether Panama can legally afford these rights to U.S. citizens inasmuch as similar protections are apparently not constitutionally available to Panamanian citizens. Furthermore, the treaties provide for prisoner exchange in certain situations. The recently executed agreement under this treaty provisions requires that the criminal offense involved be a crime in both the United States and the Republic of Panama. It is submitted that the prisoner exchange agreement will be most needed when the crime charged is not an offense in the United States (e.g., where an American citizen is imprisoned for "disrespect" to a member of the Panamanian National Guard).

E. Impact of treaty on legal services for American community on isthmus

The Canal Zone Bar is currently comprised of twenty-five members, most of whom are U.S. citizens.

The legal requirements of Canal Zone residents (most especially the American community) are served almost exclusively by private attorneys of the Canal Zone Bar.

A reasonable interpretation of the Panama Canal Treaty is that the terms and conditions under which private attorneys are presently practicing will continue, substantially unchanged, for the transition period. On the other hand, at the end of the transition period there is no question that the legal and professional status of U.S. citizen members of the Bar will be drastically altered.

Nevertheless, a small number of U.S. citizen attorneys have expressed a desire to remain in Panama and continue to serve the American community. It is reasonable to conclude that throughout the duration of the life of the treaty, there will be a continuous need for U.S.-trained attorneys to counsel and represent U.S. citizens and American business interests in such matters as wills and estates, domestic relations, criminal law, tax and corporate matters, etc.

However, under Panamanian law, only citizens of the Republic of Panama can practice law in Panama. Therefore, most of the Canal Zone Bar would be ineligible to remain and practice law after the treaty transition period.

While there is a small number of Canal Zone attorneys who are licensed to practice law in Panama, they are for the most part, elderly individuals who do not plan to actively practice law into the near future. Likewise there is another group of attorneys who are dual-nationals (U.S.-Panamanian) and who could be admitted to practice law in Panama within a reasonable period of time. However, this group is small (perhaps 2), and could not adequately represent the needs of the American community.

The needs of the American community could be met if those U.S. citizen attorneys, who so desired, were allowed to remain and practice law in the Republic of Panama.

This could be accomplished by Congressional enactment of legislation providing that the acquisition of Panamanian citizenship by U.S. citizens for the purpose of practicing law in the Republic of Panama, would not result in the loss of their U.S. citizenship. (See proposed bill, attached.) In addition, it will be necessary for there to be an exchange of notes or some form of agreement between the United States and the Republic of Panama guaranteeing that those attorneys who are members of the Canal Zone Bar as of October 1, 1979, who meet all eligibility requirements applicable to membership in the Panamanian bar generally, will be permitted to practice in the Republic of Panama.

Nonprofit organizations currently operating under Panamanian jurisdiction are subject to the provisions of Panama's fiscal and labor codes, licensing and registration requirements and Panama's tariff rates for utilities, commercial services, etc. Listed below are some of the more significant laws, regulations or requirements that impact on the operations of non-profit organizations in Panama and on their employees:

A. Terms and conditions applicable to nonprofit organizations

(1) Fiscal code provisions:

(a) Payment of income tax (or submission of documentation needed to establish entitlement to exoneration).

(b) Payment of property tax (or submission of documentation needed to establish entitlement to exoneration).

(c) Payment of duties on supplies, materials and equipment for organization's use.

(d) Payment of sales tax on goods purchased.

(e) Payment of tax on gasoline purchased for organization use or resale to members.

(f) Payment of tax to operate bar or bodega.

(g) Withholding and remittance of employees income tax to Panama.

(2) Labor code provisions:

(a) Payment of employers contribution into the Panama Social Security System.

(b) Withholding and remittance of employees' contribution to Panama Social Security System.

(c) Requirement for minimum percentage of Panamanian employees.

(d) Payment of 13th month salary.

(e) Requirement for paid vacation for employees.

(f) Payment of employers' contribution to Education Insurance.

(g) Withholding and remittance of employees' contribution to Education Insurance.

(h) Payment of severance pay.

(i) Payment of Professional Risk Insurance.

(3) Licensing and documentation requirements:

- (a) Registration as nonprofit association.
- (b) Property registration or title to hold land already occupied.
- (c) Land Use Licenses.
- (4) Utilities and rental rates:
 - (a) Electricity.
 - (b) Water.
 - (c) Telephone.
 - (d) Land rental.
 - (e) Space rental.

B. Terms and conditions applicable to employees of nonprofit organizations

- (1) Fiscal code provisions:
 - (a) Payment of Panama income tax.
 - (b) Payment of importation duty on household goods, vehicles and merchandise for personal use.
 - (c) Payment of Sales Taxes.
 - (d) Payment of Property Taxes.
- (2) Labor code provisions:
 - (a) Payment of employees contribution into the Panama Social Security System.
 - (b) Requirement to have Panama labor card applicable to all non-Panamanian employees.
 - (c) Payment of employees contribution to Education Insurance.
- (3) Licensing and documentation requirements:
 - (a) Panamanian residence documentation procedures and fees.
 - (b) Panama entry/exit documentation.
 - (4) Utilities:
 - (a) Electricity rates.
 - (b) Water rates.
 - (c) Telephone rates.

PROPOSED LEGISLATION—A BILL

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled that, Notwithstanding any other provision of law, persons who are citizens or nationals of the United States, and who prior to the effective date of the Panama Canal Treaty of 1977 were licensed to practice a profession in the former Canal Zone, and who are barred from eligibility to practice that profession in the Republic of Panama by reason of their not being citizens of the Republic of Panama, shall not lose their United States citizenship or nationality by reason of their applying for, or obtaining, citizenship of the Republic of Panama for the purpose of qualifying for eligibility to practice their profession in that country.

Mr. DOUGLASS. The other aspects are very brief, so let me if I may return to the text.

Of course, we have a number of U.S. attorneys in the Canal Zone now for the U.S. community to serve the U.S. community that will remain due to the citizenship requirements. Many of these attorneys will remain, but many of them will not become members of the Panamanian Bar.

In order to become a member of the Panamanian Bar you must be a citizen of the Republic of Panama. There are areas such as U.S. taxation, and this will be a continuing problem, labor management, the boards of local inspectors, the EEO complaints and Federal Employee Compensation Act, and court marshals; we have a number of military reservations here.

For these reasons some of our numbers will stay, some of our numbers will leave. Some of our numbers will stay under restrictions placed upon them, as I have indicated, because of the inability to become fully licensed.

We are also looking at the legislation and concerned with what might happen after 1982. The cases that will be in the court in 1982 apparently will be those that are uncompleted, pending, and that is domestic relations matters of continuing jurisdiction.

It will be necessary for the committee, for the legislative package, to include a transfer of jurisdiction. The reason that it is going to require the special legislative response is because the statute relating to the transfer of jurisdiction and transfer of venue discusses transferring it to courts which would have original jurisdiction.

Since this is a unique Federal district court, they will not be transferable to just any Federal district court. So it will be necessary to look at a court that can acquire the continuing jurisdiction as well as serving as a depository for court records.

I would now say that I would open the five of us up to any questions that you may have at this time.

Mr. MURPHY. Under annex C will you be permitted to represent a U.S. citizen in a Panamanian court?

Mr. DOUGLASS. To me, as we best understand it, me personally?

Mr. MURPHY. That's right, a non-Panamanian national attorney.

Mr. DOUGLASS. I fight all those bills, and the answer to the question is no, as a non-Panamanian and a nonmember of the Panamanian Bar and a nonlicensed attorney in the Republic, the answer to the question, as I understand it, is no.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. No questions.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. Do you know of any ongoing binational discussion under article XI to attempt to resolve these questions you have raised, because it clearly states that that particular article can be resolved as otherwise agreed to between the two parties.

It seems to me that, it's one of the most important areas in the treaty because every dispute that will arise, and this is at least the method to settle it. Is anybody talking about this?

Mr. DOUGLASS. I personally am not involved in such a committee, but I know one to exist and I know that such discussion, certainly it's a fertile area for discussion. However, I don't believe that they really are addressing themselves to the issues that have been brought up this morning. At least we brought these issues up specifically because we feel that they are not.

Mr. BAUMAN. So the Zone Bar Association is not being consulted by either side in determining these questions you have raised?

Mr. DOUGLASS. By and large, that is a fair statement.

Mr. BAUMAN. Have you heard any of the same rumors you probably heard discussed here about attempts to subject American corporations and nonprofit organizations to back taxation over a period of years? Is that a true state of affairs; is that what is happening?

Mr. DOUGLASS. The rumors, yes, that would be a fair statement, that I have heard the rumors, yes. Do I know anything more than the rumor officially? No; I do not.

Mr. BAUMAN. One last question: Is it your understanding the Canal Zone Code and the United States Code will remain in effect in all instances in the zone, that remain after the treaty takes place unless we repeal it in this implementing legislation, or that it will all remain in effect?

Mr. DOUGLASS. I think that is certainly implicit within the language of the treaty and within the language for that matter, most

of the language, of both bills. But it's a very small area that is being covered there.

I don't know what the effectiveness of it would be at that point. That would be the only question I would have, is what is it really covering, what territory, and to what extent is one person on one side of the street subject and one person on the other side of the street not subject?

Mr. BAUMAN. I will just make the observation, Mr. Chairman, we have talked an awful lot here this morning about rights of the various people covered by this treaty and we are now confronted with a description of a situation in which they have no means to vindicate their rights, civil, criminal, or otherwise.

It's incredible to me we have come this far and may have no resolution of one of the most basic problems facing us. I don't understand it. Maybe the Embassy will tell us everything is all right.

Mr. MURPHY. It was a lawyers' treaty.

Mr. BAUMAN. Not this lawyer.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Lent?

Mr. LENT. No questions.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. No questions.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. No questions, Mr. Chairman.

Mr. MURPHY. Governor?

Mr. EVANS. No questions.

Mr. MURPHY. Thank you very much, and be sure we get a brief so we can get it to the other committee as well as our own counsel.

Thank you very much.

The committee stands adjourned.

[Whereupon, at 2:10 p.m., the subcommittee adjourned.]

CANAL OPERATION UNDER 1977 TREATY

SATURDAY, FEBRUARY 24, 1979

HOUSE OF REPRESENTATIVES,
PANAMA CANAL SUBCOMMITTEE,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Balboa Training Center, Balboa, Panama Canal Zone.

The subcommittee met, pursuant to notice, at 10:15 a.m, Hon. John M. Murphy (chairman of the subcommittee) presiding.

Mr. MURPHY. The subcommittee will come to order.

The committee met this morning with President Royo and then went to Miraflores locks and now we will commence a second day of hearings.

We are privileged to have as our first witness Mr. Shannon Wall, president of the National Maritime Commission. He will be accompanied by Capt. Norman Werner, president of the National Organization of Masters, Mates and Pilots, and the Pilot Membership group from the Panama Canal Branch; Capt. S. V. Faulkner, branch agent, Caribbean Branch; Alfred J. Graham, president of the Central Labor Union-Metal Trades Council; Franklin Hamilton, area counsel, I.O.M.M. & P.; Mark Tartar, vice president, CLU-MTC; and Ralph Sheppard, president, American Federation of Teachers, Local 29.

If the gentlemen would please come forward.

STATEMENTS OF SHANNON WALL, PRESIDENT, NATIONAL MARITIME UNION, ACCOMPANIED BY CAPT. NORMAN WERNER, PRESIDENT, INTERNATIONAL ORGANIZATION OF MASTERS, MATES, AND PILOTS (I.O.M.M. & P.), PILOT MEMBERSHIP GROUP, PANAMA CANAL BRANCH; CAPT. S. V. FAULKNER, BRANCH AGENT (I.O.M.M. & P.), ATLANTIC AND GULF MEMBERSHIP GROUP, PANAMA CANAL AND CARIBBEAN BRANCH; ALFRED J. GRAHAM, PRESIDENT, CENTRAL LABOR UNION-METAL TRADES COUNCIL (CLU-MTC); FRANK HAMILTON, AREA COUNSEL, I.O.M.M. & P.; MARK TARTAR, VICE PRESIDENT, CLU-MTC, AND RALPH SHEPPARD, PRESIDENT, AMERICAN FEDERATION OF TEACHERS, LOCAL 29

Mr. MURPHY. We appreciate your taking the time to come here. We know you were involved in the AFL-CIO executive council meetings and have been one of the outspoken advocates of a strong and viable American flag merchant marine. We also know of your long term and long time involvement and interests here in Panama.

You may proceed.

Mr. WALL. Thank you, Mr. Chairman.

We thank the members of the committee for coming to Panama to take up this very vital legislation.

You have already introduced my colleagues who are here with me, so we appreciate this opportunity to appear and testify on behalf of our members who are employed in all phases of activities in the operation in the canal area. But more specifically, we represent the employees who are directly involved in the movement of the ships through the canal.

After I conclude my statement Captain Werner, Captain Faulkner, and Al Graham will present their statements. Following this Frank Hamilton will present the details of our labor-management relations paper.

We have, since the treaty negotiations began some 13 years ago, avoided taking a position on the treaty. Our position has continually been to do what we could as labor unions to look out for our members and to leave the treaty negotiations to those expert in that field.

Additionally, because we are concerned members of the maritime industry, we will make certain recommendations pertaining to future tolls. Therefore, the following comments are not intended to reflect on the treaty.

In our appearance last week before the House Post Office and Civil Service Committee, we asked that they urge the Congress to give the same consideration to the human aspects of the treaty that has been given to the material aspects. The chairman of the committee assured us that their purpose in being here was to assure that the human aspects of the treaty would be taken care of.

We have been involved for a number of years and have testified many times before Congress on behalf of the workers in the Panama Canal Zone. I say this because much of what we will be saying here we have said before.

In addition to our comments here we will, with your permission, submit additional comments on other sections of the bills.

While it may not be the direct subject of your hearings today, we require that as a part of your implementing legislation you stipulate that there be a representative from the labor movement and the maritime industry on all boards or commissions established to run the canal.

It is our contention that the two major elements in the operation of this canal are labor and the transitting merchant ships. In this regard, it is essential that labor have a representative at the highest levels to assure that their interests will be protected regardless of what legislative guarantees are enacted to protect their interests. In our long experience with the Federal agencies we have found wide gaps between what is enacted through legislation and what actually happens when the regulations are drafted implementing these laws.

A labor representative would serve as a constant watchdog on behalf of the employees. Also, all operating boards or commissions should receive an input from someone who is knowledgeable on maritime.

The Panama Canal without question is a maritime entity. Its principal source of revenue is derived from merchant vessels tran-

sitting the canal. Therefore, someone with an understanding of the maritime industry should be on these boards and commissions so that their knowledge will be readily accessible to those operating the canal. We have, for a number of years, thought it foolish that the largest waterway in the world did not have a member from the maritime industry on the board.

We also urge the elimination from the cost structure of the operation of the canal all items of expense that are not directly related to the movement of the ships through the canal. This should include any additional financial commitments that are a direct result of the treaty.

It makes very little sense to us that the financial obligations of a treaty should be paid for by one industry. Rather, we would request that these financial obligations be paid for by all citizens. It is our understanding that the increased financial obligations of the 1955 treaty were borne principally by the Federal Treasury. This would also be in compliance with a reservation or understanding of the Senate to article II of the treaty which states, among other things, that before the tolls are adjusted, consideration shall be given to the effect the adjustments would have on the trade patterns of both countries.

Additionally, this reservation requires that the domestic fleets, the international commerce and the competitive effect, in relation to other means of transportation, have to be considered.

The Comptroller General of the United States in a report to the House of Representatives in November of 1978 made the following observations concerning the administration's implementing legislation:

Neither the new treaty nor the draft implementing legislation contain provisions concerning repayment of the unrecovered investment. Thus, if any of it is to be recovered over the life of the treaty, the extent and method of repayment should be prescribed by law; a major consideration is the extent to which the shipper and the taxpayer should share the cost of the unrecovered investment.

It is our contention that the major portion of this cost should not be borne by the shippers nor the workers.

We are very much concerned that if the cost of the canal continues to rise, either the tolls will be increased to the point where they will be directly harmful to our merchant marine in addition to encouraging the use of the land-bridge concept that is disrupting to the shipping patterns to essential to our merchant marine, or these increased costs will be taken out of the hides of the workers either through reduced compensations or lay-offs.

Section 303 of the administration bill and sections 142, 145, and 225 of your bill give the Panama Canal Commission the authority to establish a wage and employment system and also establish a form of collective bargaining. This gives us concern. We recognize that H.R. 111 attempts to eliminate the discriminatory language of section 7103 of title VII of the Civil Service Reform Act of 1978, as well as make the Labor-Management Relations System applicable to all agencies in the canal area. As I said earlier, Frank Hamilton will speak in detail on our suggested substitutions for these sections.

In 1976, as a part of a memorandum of understanding between the Canal Zone Government and the employees, the following was agreed to:

To initiate action immediately to formulate a labor-management committee to commence a study, with full participation of unions of all ramifications of application of Executive Order 11491, as amended, or other mutually acceptable form of collective bargaining with employees of the Panama Canal Company and the Canal Zone Government.

It was this general agreement that initiated many meetings between the labor unions in the zone that lead to a general consensus of what we believe is necessary to protect the interests of the workers in the Panama Canal area. We have also had continuing meetings with the Government authorities on this subject.

We are fearful that unless there are statutory authorities specifically prohibiting it, a dual pay system will be established for future employees who will be hired after the new mechanism is set up to run the canal.

The Department of Defense people, with whom we have met before and after the treaty, have continually emphasized to us that the employees who work for the Canal Zone Company/Government at the time of the transfer to the Commission will not make less wages. This implies to us that the new hires will make something less. This will surely happen if the discriminatory language of section 7103 of title VII of the Civil Service Reform Act of 1978 is allowed to apply.

If this happens, as we believe it will, we will be back to a situation of where two workers, working side by side, doing the same job, will receive different wages.

We further believe that this Panama Canal employment system which will be established in the implementing legislation will eliminate the application of the U.S. Federal minimum wage that has been applied here since 1966. The unions and the Congress worked extremely hard over many years in getting the Federal minimum applied to all workers in the Zone.

We have continuously worked for an employment system that would apply equally to all workers in all Federal agencies in the Panama Canal area. This means to us equality of treatment regardless of the citizenship of those presently employed and those to be employed.

There are many justifications for this. When the U.S. Government entered the scene in this part of the world in 1903, there existed a completely different set of conditions than those that exist today. In short, the United States established a U.S. standard of living in this area. This was brought about by the fact that the United States had to, from the very outset, provide for the total needs of its armies of imported workers, United States and tropical labor alike.

This meant that they had to import from the States all of the essential needs which were necessary for this work force to exist. All employees, both United States and non-United States, were granted the right to purchase on the zone regardless of residence at identical prices. In 1955 this privilege was taken away from those non-U.S. citizens living off the zone. The cost of living in the Republic of Panama is the 24th highest in the world.

For example, in 1976, a can of corned beef which sold for \$1.65 in a Canal Zone commissary, 90 cents in Detroit, and \$1.16 in Brooklyn, N.Y., sold in Panama City for \$1.90. These relative differences exist also today. Premium gasoline sells throughout the Republic of Panama for more than \$1.10 per gallon. This same premium gas sells for 70 cents in the zone.

As we testified before the House Post Office and Civil Service Committee, at the present time the Governor of the Canal has the basic authority to set the wages for the Canal Company/Government employees, and he does. Through the Civilian Personnel Policy Coordinating Board, these wages are applied to all Federal and nonappropriated fund employees in the zone.

As a result, the wages at best can be described as a hodgepodge with very little rhyme or reason and we will not attempt to explain them in detail.

While there are exceptions, most nonmanual grades 6 and above are based on the General Service schedule from the States. The grades 1 through 5 wages, on the other hand, are set on a Canal Zone NM wage base.

Again, while there are exceptions, most manual grades MG-10 and above are set in accordance with the Wage Board rates in the United States and the grades below 10 are set on the Canal Zone MG wage base.

This Canal Zone wage base is a carryover from the time when the gold and silver pay systems were in effect. It was modified by the Treaty of Mutual Understanding and Cooperation and the Application of the U.S. Federal Minimum Wage in 1966. Other than these two inputs, we do not have the slightest idea of how these local NM and MG wages are set.

The implementing legislation should establish by law, and not by administrative fiat, a coherent unified pay system providing equal pay for equal work in all areas for both present and future employees, citizen and noncitizen.

We ask that section 325, early retirement eligibility and section 326, early retirement computation of H.R. 1716 and sections 205 and 206 of H.R. 111, be amended so that they will cover those Canal Zone DOD employees who are involuntarily separated or scheduled to be separated as a direct or indirect result of implementation of the treaty.

Several thousand Panama Canal Company/Government employees have already received notice of transfer of their units to DOD control. Subsequently, RIF actions will be initiated by DOD after combined Company/Government and armed services retention rosters are compiled for use in said RIF actions.

It is our contention that RIF actions resulting therefrom are a direct result of the treaty and should entitle those affected to the early retirement provisions of these subsections. Former P.C./C.Z. Government employees, transferred to DOD, should also be entitled to continuing eligibility for subsequent retirement, inasmuch as their transfer was necessitated by treaty actions.

Anyone terminated by treaty action should not be considered a new employee if subsequently re-employed.

We will submit at a later date recommendations for your consideration that will extend to the Army and Air Force exchange

personnel the same retirement options extended to the appropriated fund employees.

I will conclude my portion of our remarks by stating our pleasure with the inclusion of another group of nonappropriated fund employees, those employed in the messes and the officers and noncommissioned officers' clubs, under the retirement benefits of section 329 of H.R. 1716.

While this concludes my remarks we ask that you withhold any questions you may have until Captain Werner, Captain Faulkner, the CLU-MTC, and Mr. Hamilton have finished with their remarks. We suggest this in the interest of saving time as their remarks may clear up certain of your questions.

Thank you very much.

Mr. MURPHY. Thank you, Shannon.

Captain Werner?

Captain WERNER. Good morning, Mr. Chairman and gentlemen of the Merchant Marine and Fisheries Committee.

I am Norman Werner, a working pilot and also president of the Panama Canal Pilots Association.

One of the main concerns of the Panama Canal Pilots Branch is to quality of the canal operation after the treaty of 1977 goes into effect. The principal guarantee of a continued safe and efficient canal is a highly motivated and qualified work force in the operational field.

As far as pilotage service is concerned, this means professionals with the proper education, marine background and training to pilot vessels through the Panama Canal.

At present we have a qualified work force that cannot be replaced overnight. We feel that the early retirement provisions of the legislation is the key to retaining the qualified professionals now on the job.

In order to replace these professionals in the coming years and insure a continuing supply of qualified maritime personnel to pilot the ships through the Panama Canal, we propose that an allocation of 0.002 percent of the gross yearly canal revenue be used for the education of Panamanian youth in the maritime academies and schools of the United States. This would supplement the supply of deck and engineering graduates from the Panama Nautical School.

In part I, administration, section 102 of H.R. 111, it is proposed that the composition of the supervisory board of nine members is to be made up of business and professional people not directly connected with the Panama canal. Since the Panama Canal is a one-of-a-kind enterprise, we believe it would be more prudent to have two board positions filled by employees with a comprehensive knowledge of canal operations, comparable to the growing trend among international corporations.

In the past we have had a board of directors composed of business and professional people. These boards have given their stamp of approval to various multimillion-dollar projects that have proven to be of questionable value to the mission of the Panama Canal. A designee from the field could provide the expertise necessary to challenge future costly white elephants.

The Panama Canal Pilots Branch is encouraged to see the inclusion of your proposed legislation of section 1353, regulations gov-

erning inspection. We feel that a high standard of vessel inspection is essential to a continued safe and efficient operation in the Panama Canal.

A high standard of excellence is required to maintain sufficient inspection we would like to see the section expanded to include internationally recognized qualifications and standards for licensing and professional machinery requirements.

Thank you, Mr. Chairman.

Mr. MURPHY. Captain Faulkner?

STATEMENT OF CAPT. S. V. FAULKNER

Captain FAULKNER. Mr. Murphy, gentlemen, like the gentleman who has just spoken to you we are also involved with the operation of the canal.

The information and positions they have presented to you have our complete concurrence and support.

I represent the Panama Canal and Caribbean Branch of the International Organization of Masters, Mates, and Pilots. We are: The boarding officers who clear arriving transit vessels; the admeasurers who determine the transit tolls; the tugboat captains who assist transiting vessels; the marine traffic controllers who coordinate all transit operations, and the apprentices who are training to become tugboat masters and later to possibly become canal pilots.

We are professionals, not professional labor leaders, but professional craftsmen of the Panama Canal, and we take pride in our jobs.

Aside from the performance of our daily jobs, we are also tasked with training the men and women who will relieve us by the end of the century. In some instances this transition training has been going on for over 10 years.

We endorse the spirit of the treaties. However, in all common-sense and fairness, we cannot support conditions where our eventual peers will work under different wages and work rules. This is divisive and certainly not conducive to harmonious labor relations. It destroys belonging and is disruptive to any community of interest. Without this, good faith, morale, and pride in performance are lost, as well as harmonious relationship between employees who must work together.

No responsible labor group here plans or desires a strike, slowdown, or sickout. However, our membership is frustrated because of uncertainty and lack of constructive influence over our future. We are vulnerable and we don't like it.

For example, by October 1, 17 percent of the towboat masters can retire. On the other hand, 55 percent of the masters and mates have less than 5 years Panama Canal service.

What are our retention incentives?

Thank you very much, Mr. Chairman.

Mr. MURPHY. Thank you, Captain Faulkner.

Mr. Graham?

STATEMENT OF ALFRED J. GRAHAM

Mr. GRAHAM. Thank you, Mr. Chairman.

Mr. Chairman and members of the committee, I am Alfred J. Graham, president of the Canal Zone Central Labor Union and Metal Trades Council. The CLU-MTC covers a cross-section of employees of the Panama Canal Company/Canal Zone Government. Our organization includes all Canal Zone craft unions, school teachers, firefighters, marine engineers, and three AFGE unions.

We wish to thank the Panama Canal Subcommittee for the opportunity to express our views and concerns on treaty-related matters and the implementing legislation.

Mr. Chairman, our presentation is slightly technical, and it is already a matter of record.

Mr. MURPHY. We shall make it a part of the record at this point. [The statement follows:]

TESTIMONY OF ALFRED J. GRAHAM

I am Alfred J. Graham, President of the Canal Zone Central Labor Union and Metal Trades Council. The CLU-MTC covers a cross-section of employees of the Panama Canal Company/Canal Zone Government. Our organization includes all Canal Zone craft unions, school teachers, firefighters, marine engineers and 3 AFGE unions. We wish to thank the Panama Canal Subcommittee for the opportunity to express our views and concerns on treaty-related matters and the implementing legislation.

In the following commentary and recommended improvements to the proposed Bill to Implement the Panama Canal Treaty of 1977, we shall very likely address matters which are not the direct concern of this committee. However, we believe that it is important for the committee to be aware of the total environment in which the employees of the Panama Canal Company and Canal Zone Government function.

We live in a company town. On the surface, the visitor sees an idyllic community. Yet, even with the present status of the Canal Zone, those who have chosen to serve here have had to make sacrifices. Simple examples are the loss of the pleasure and financial advantages of home ownership, missed career opportunities, and the severe disruption to extended family relationships.

With the loss of U.S. constitutional protections, a police force that operates within the Bill of Rights, the Postal Service, pure food and drug laws and many of the amenities of Canal Zone life, each employee must make a fresh decision regarding his job, lifestyle and future. It is a fact of life that if the rewards offered are great enough, people will go anywhere. Through the Congress's action on our recommended incentives, the thousands of individual decisions will develop into trends of immediate exodus or willingness to stay and assist the Panama Canal through the transition period. There is a great pride among the work force in the waterway and we would like to see it remain a model of efficiency, but without sufficient inducements, the many critical skills so necessary to its operation may be lost. For the 20 years remaining, let the Congress not be accused of being "penny-wise and pound-foolish."

In Section 105, we would like to request that 25 percent of the designees to enjoy the privileges and immunities accorded under Article VIII of the Treaty will be representatives of United States organized labor groups in the Republic of Panama. Unfortunately, in the past, some of our labor leaders were detained because of their activities and views.

In Section 106, which deals with the transfer of records, we ask, for obvious reasons, that the individual records of U.S. citizens be transferred only in consonance with the U.S. Privacy Act.

In Section 205, in which the Board of Directors of the Commission is defined, we ask that a qualifying statement be added providing that no more than 50 percent of the individual country representatives may be officers of military forces. The reasoning for our request is that the Commission will be a civilian agency and the Board of Directors should be attuned to civilian desires for lack of regimentation. Additionally, we ask that one of the appointees be an employee representative of organized labor. This measure is designed to assure that the full ramifications of Board policy decisions on employees will be considered.

We would also like it noted that we recommend approval of Section 206 as written which specifies quorum requirements for the Board of Directors.

In Section 208, which deals with the liability of the Commission, we would like to see added to "(C) it is exempt from any liability for prejudgment interest" the additional clause, "except in cases involving employee compensation in any form." It is sad to report that employees have often had to sue for that which was owed them and it is hoped that this addition would have the effect of keeping cases from reaching the courts and preventing delays or appeals which are designed solely to discourage and bankrupt employee organizations.

In Section 212b, we would like added to Section 232 of title 2 of the Panama Canal Code a paragraph "(e)" providing that military facilities are authorized to provide health care services to elderly or disabled persons who were eligible for such health care prior to the effective date. It is felt very strongly that the moral obligation which the U.S. Government has to these people, many of whom worked during the Construction era, will not be fulfilled by merely providing the funds for their care in Panama. Hospitals in the Republic of Panama in the canal area are already overcrowded and will in three years have to serve the Panamanian employees' families who are presently treated in the Canal Zone Hospitals. There is a very real fear that the elderly and disabled will be lost in the shuffle.

In Section 231b, which provides for cross-servicing agreements between agencies, we would like added to Section 372b of title 2 of the Panama Canal Code the provision that no cross-servicing agreement shall result in the loss of any employee benefit referred to in Section 202 of title 2, Panama Canal Code, which is Section 321 of this bill. As we shall explain later, despite assurances that there would be no loss of benefits to employees due to the Treaty, such has been planned for employees transferred to other agencies from the present Company/Government. It is our intention through this addition to discourage attempts to swindle employees and save money. At least one union was told that according to the Treaty, their function could be transferred to another agency which would in turn contract back to the Commission.

With reference to Section 270, the CLU-MTC fully supports the study and construction of a sea-level canal in Panama.

In Section 301, we ask that Section 154 of title 2 of the Panama Canal Code not be repealed since it precludes discrimination in training programs. While the Treaty provides for preferential hiring of Panamanians, once "on board" they would have to be trained. However, to deny any employee, whether U.S. or Panamanian, the opportunity to be trained for advancement on the basis of citizenship makes a mockery of the promise made repeatedly to us that there would not be preferential promotional policies. Thinking of the canal's future, it should seem obvious that the employee who perceives himself as being discriminated against will prefer to leave for better opportunities.

In Section 303, in which the Panama Canal Employment System is defined, we would like to add to title 2, Panama Canal Code, Section 142a2, following the words "taking into account any recommendation of the Panama Canal Commission" the additional clause, "after appropriate coordination with labor organizations under collective bargaining procedures established by the Treaty." Simply, we want to negotiate the regulations under which we shall be working. In Section 142c, we would like all that follows the word "incorporated" deleted and the following added: "the provisions of chapter 71 of title 5 of the United States Code with the deletion of Section 7103a2Bi and the addition of a section providing for the negotiation of U.S. wage areas to apply to all Federal agencies in Panama. Future amendments to chapter 71 of title 5 of the United States Code shall be applicable to this system so established." This change would permit U.S. and Panamanian employees to negotiate together and would also implement Section 145 of H.R. 111 in a manner which would not permit the Administration to unilaterally ride roughshod over the employees.

The protection of Section 150 of that Bill is desirable. To provide the uniformity of application implied in our change to the DoD agencies in Panama, it would also be necessary to restructure Section 142b of title 2 of the Panama Canal Code to ensure that those agencies shall also operate under the Panama Canal Employment System.

Section 305 of the Bill meets with our approval. However, we would like it made clear that the limitation of not more than 25 percent overseas recruitment and retention differential does not apply to the adjustment of compensation referred to in Section 324 of this Bill.

Section 306a dealing with the transfer of Federal employees to the Panama Canal Commission has our approval, but we feel that present employees, who have no Stateside re-employment rights in other agencies need the following protection added: "Personnel who are transferred/detailed from other Federal agencies and

who retain re-employment rights in that agency will not, in case of reduction-in-force actions in the Panama Canal Commission, Department of Defense Dependent Schools or other Executive agencies in the Republic of Panama be granted displacement rights over personnel who were employed by the Panama Canal Company/Canal Zone Government prior to the effective date of the Treaty.

In Section 307, dealing with Merit and Other Employment Requirements, we would like to again insert, following the words "recommendation of the Panama Canal Commission", the phrase, "after appropriate coordination with labor organizations under collective bargaining procedures established by the Treaty." The entire point of collective bargaining is to have some say in one's job destiny and we feel that to exclude us from the establishment of the ground rules diminishes everything else we do.

Section 321 of the Bill is necessary to meet the Treaty Requirement of Article X, paragraph 2b, which is designed to "grandfather" benefits enjoyed by present employees. In the enumeration of benefits there are some changes which need to be made if there is to be true meaning behind the assurances which were given to the employees and organized labor that we would be taken care of. Certainly nothing is more fundamental than the method by which a worker is compensated. Yet, in listing "wage rates", the Administration has made it clear that only present salaries are guaranteed. Future raises will depend on administrative action. This would seem to be a rather high-handed attitude in the face of the Comparability Act and past practice. "Terms and conditions of employment"—we do not bargain for our raises nor do we beg for them; we get them automatically when our counterparts in the States get them. Many of us are on wage bases that are related to various areas. In the case of one of them, the Washington, D.C. pay base, Congress said quite clearly, as can be seen in Attachment No. 1, that although statutory authority had to be repealed in implementing the 1955 treaty, "It is the intent of the Congress that the precedent established in the Canal Zone in relating Canal Zone wage increases to comparable wage increases in the United States will continue to be followed." Obviously, in an inflationary world, frozen wages will become reduced wages. If payments to the Republic of Panama are to be adjusted for inflation why should not the salaries of those who are responsible for the toll revenues be similarly adjusted? We are being asked to remain with the Panama Canal to see it through the transition, but unless this interpretation of "terms and conditions of employment" is changed by the Congress, it would appear that the employees who remain the longest can look forward to having their pay frozen as so as the Administration feels that there are few enough of them in their particular craft that their loss could be absorbed. Every worker can see this being applied to his job; it is just a question of when. We, therefore, ask that you change "wage rates" to read "wage bases and formulas."

We also request that following "leave and travel," the phrase "except as modified to provide equity with other employees within the agency to which the employee is transferred" be deleted. When the employees who are scheduled to be transferred were employed by the Panama Canal Company/Canal Zone Government, they received a total benefit package. They have every reason to expect that their benefits should remain intact since they will be doing the same work at the same location with the same U.S. Government as employer. These employees certainly did not ask for this transfer; they are only pawns in a budgetary reshuffling. The requested deletion will also remove the incentive to arbitrarily transfer other employees as we noted in Section 213.

In addition to the itemized benefits, we would like to add, "sabbatical leave for teachers, provision for housing or additional housing allowance, educational travel benefits and maximum hours standards for all firefighters as established by the Fair Labor Standard Act." The latter is necessary due to the inapplicability of the Act following entry into force. We also request a final sentence, "All other present benefits not specifically listed above are not excluded by this enumeration" be added at the end of Section 202, title 2 of the Panama Canal Code.

In Section 322, dealing with the placement program, we ask that paragraph "d" be added to Section 20-3 of the Panama Canal Code, title 2, as follows: "A United States citizen who immediately preceding the date of the exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of an agency of the United States Government in the Canal Zone, Canal Zone Government/Panama Canal Company or other Executive Agency exempt from present 5-year rotation plan who wishes to leave voluntarily will be permitted to register for placement assistance at any time he desires throughout the life of the Treaty." This addition is necessary in order that employees have the confidence that there is an escape hatch if needed in case conditions deteriorate following the five years presently provided

in the Office of Personnel Management's program. In five years, employees lose access to SPO mail facilities, sales stores and exchanges. By making the termination of the voluntary placement program at the same time, employees are being encouraged to leave rather than continuing with the Commission.

In Section 323, establishing a new Section 204 to title 2 of the Panama Canal Code dealing with educational travel benefits, it is again necessary to "grandfather" the transferees by inserting after "Dependents of United States citizen employees of the Panama Canal Commission" the phrase, "and dependents of U.S. citizen employees of other Executive agencies who were employees of the Canal Zone Government/Panama Canal Company on the day prior to the effective date of the Treaty."

At the end of Section 324, Adjustment of Compensation, we would like added following, "shall be determined by the Panama Canal Commission" the phrase, "after appropriate coordination with labor organizations under collective bargaining procedures established by the Treaty." Also, a sentence reading, "The allowance will be subject to regular review by a joint Panama Canal Commission-Labor Committee."

Sections 325 and 326 are the provisions for early retirement which, from the employees' standpoint, is the centerpiece of the implementing legislation. It is unfortunate that the Administration's provisions seems to meet just one objective—the prevention of an exodus by employees with long periods of service. While this is an important factor within the first two or three years of the treaty, it does not take into consideration effective management through the next 20 years. The objective of inducing young employees to remain with the Canal was not met. Our proposal realistically defines a retirement system which meets the five parameters that exist:

(1) Provide for employees who are to be displaced through no fault of their own bearing in mind that Panama has an astronomical unemployment rate and no unemployment or welfare benefits system.

(2) Induce key employees to remain at the Panama Canal and maintain efficient operation.

(3) Prevent an exodus of employees with long periods of service.

(4) Prevent an exodus of employees with short periods of service who see an insecure future and do not want to become captives of the retirement system, but who would be willing to remain and see what will be happening.

(5) Encourage those persons excess to the Canal's needs to separate.

Section 325, Early Retirement Eligibility, begins with the Hazardous Duty Employees. At present, the police are scheduled to be separated in three years. The firefighters have a particular problem regarding their future because unlike other employees who know that their jobs are to be phased out either October 1st, three years from now, or not until the year 2000, the firefighters are in limbo. Two stations go to Panama and one is phased out as of October 1st. Beyond then, the Treaty says, "... the United States ... and the Republic of Panama ... will review periodically the most effective allocation of both Parties' fire protection resources, and, if appropriate, the United States will transfer to the Republic of Panama such other fire stations as are excess to its needs." As Panama is to be paid to operate these stations and the payments are to be increased as more are turned over, what we have here is contracting out of Federal jobs at the stroke of a pen. It should be understood that it is virtually impossible to enter a municipal fire department after age 35, aside from residency requirements, and that the placement program is of minimal benefit for continuation of a career as a Federal firefighter. The Administration has been asked to either provide a timetable of station turn-overs or at least negotiate an agreement with the Republic of Panama that such additional transfers will only be accomplished by attrition of permanent firefighting personnel. But so far, only vague assurances, rather than guarantees, have been received. With their job security virtually non-existent, why should the firefighters remain? Inducements must be offered because aside from the obvious needs of serving the Commission and Military properties, world shipping and insurance interests demand adequate protection for the waterway. One inducement that we request is the deletion of the words "age and" which follow the clause "upon separation, meets the" in paragraph c2 of Section 8336 of Title 5 of the United States Code. Actually, this would bring the eligibility requirements into line with those of most municipalities and to the level that we expect Hazardous Duty retirements are headed generally. Although it has long been known that a firefighter's life expectancy is ten years below the norm despite better physical condition at the time of entry into the field, only recently has it been found that heart attacks account for 44.5 percent of line-of-duty firefighter deaths and that they peak by the age of 45 and by 20 years service. These findings are graphically illustrated and attached. Obviously, the debilitating effects are cumulative. It is therefore also

requested that because fire officers who were recruited from non-Federal positions in the United States were required to have prior experience, they be provided the opportunity to buy coverage in the Civil Service Hazardous Duty Retirement System for such years of service to a maximum of ten years provided that they do not have a vested interest in a pension plan for such service. We are not seeking that a person would be able to buy a double coverage nor that this be continued for those employed by the Canal Zone Government after the effective date of the exchange of instruments of ratification. It would be an appropriate way of recognizing the loyalty of Stateside recruits who, unlike a greater number of fire officers who saw the handwriting on the wall regarding their job security, stayed on.

The teachers also need a buy-in provision or else the school system may be decimated due to the fact that 70 percent of the States have such a plan and our teachers have the ability to take advantage of it. Employees who have previously paid into the Railroad Retirement Fund would also like to transfer their credits. This would entail no expense since both are Federal systems.

We would also like to request that after the words "employed by" in subsections h3B and i2B the words "or rehired at the convenience of" be inserted to accommodate those persons who may have been temporarily displaced from employment during the entry into force and establishment of the Commission. In order to give younger employees more incentive to try out the Commission and the new lifestyle, we also recommend that provisions be adopted that would permit employees who are involuntarily separated with fewer than 18 years service to receive a deferred annuity at age 55. People in their twenties are needed to see the transition through to a successful completion, but the standard deferred annuity until age 62 for fewer than 20 years service is a disincentive to the young person who cannot conceive of that time ever coming.

We are requesting major changes to Section 326 of the Bill to provide incentives for employees to not only stay until they meet the minimum requirements for retirement, but to remain beyond that time as well. We would like to introduce a new subsection (n)1: "The annuity of an employee retiring, immediate or deferred, under this subchapter who was employed by the Panama Canal Company or Canal Zone Government on the day of exchange of ratification documents of the Panama Canal Treaty of 1977, is computed with respect to the service prior to the entry into force of the Panama Canal Treaty of 1977 by multiplying:

A. $2\frac{1}{2}$ percent of the employee's highest annual pay by the first 10 years of such service plus.

B. 2 percent of the employee's highest annual pay for the remaining years.

C. Firefighters and law enforcement officers will have all such time computed at the rate of $2\frac{1}{2}$ percent of the highest annual salary."

We would redesignate subsection (n) as (n)2 and after the word "retiring" insert the phrase "immediate or deferred" and substitute for all that comes after "multiplying" the phrase, " $3\frac{1}{4}$ percent of the employee's annual pay by such service." In Subsection O, we want to change from the fixed dollar amount that does not reflect the inflationary world in which we live. We request that you substitute for the phrase, "\$8 for each full month" the phrase " $\frac{1}{2}$ percent for each full year." Because the Treaty also calls for both more liberal entitlement and computation of annuities, it is essential that the word "not" in the second sentence of Subsection O be deleted. Otherwise, as the Bill is presented by the Administration, a firefighter or law enforcement officer with 20 years service before the entry into force will receive no greater computation of annuities. If our suggestions for Section 326 are adopted, we would have no objection to deleting subsection (p). However, otherwise, we request that the "\$12 for each full month" be deleted in favor of " $\frac{3}{4}$ percent for each full year."

Section 327, which extends the provisions of various benefits provided in this Bill to other groups which have been historically treated the same as Company/Government employees, is also endorsed by us.

Section 330 appears to be the appropriate place to add the following: "The Washington, D.C. pay base for the public school system will be the applicable base for teachers who are employed by the Canal Zone Government School System immediately prior to the effective date of the Treaty and are transferred to the Department of Defense Overseas Dependent School System."

We would also like to go on record as approving of Section 341, 410 and 501 of the Bill.

Section 502b, regarding costs of disinterment, transportation and reinterment of remains, will only be satisfactory if the word "not" is removed.

85TH CONGRESS
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 2149

IMPLEMENTATION OF WAGE AND EMPLOYMENT PRACTICES AGREEMENT WITH REPUBLIC OF PANAMA

JULY 14, 1958.—Ordered to be printed

Mr. MURRAY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 1850]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1850) entitled "An Act to adjust conditions of employment in departments or agencies in the Canal Zone," having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill and agree to the same.

TOM MURRAY,
JOHN YOUNG,
ROBERT W. HEMPHILL,
RALPH J. SCOTT,
EDWARD H. REES,
G. CUNNINGHAM,
DAVID DENNISON,

Managers on the Part of the House.

OLIN B. JOHNSTON,
DICK NEUBERGER,
FRANK CARLSON,

Managers on the Part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1850) entitled "An act to adjust conditions of employment in departments or agencies in the Canal Zone," submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The House amendments struck out all after the enacting clause and inserted a substitute text and provided a new title for the Senate bill.

With respect to the amendment of the House to the text of the Senate bill, the committee of conference recommends that the Senate recede from its disagreement to the amendment of the House and agree to the same.

The committee of conference strongly emphasizes that, with respect to the repeal of certain provisions of existing law by section 16 (b) of this legislation as agreed to in conference, it is intended that, when by act of Congress employees in the United States receive pay increases, United States citizen-employees in the Canal Zone now covered by the laws being repealed by such section 16 (b) will not be deprived of benefits which would have accrued to them if such laws had not been so repealed.

By the repeal by such section 16 (b) of certain provisions of existing law, the committee of conference again strongly emphasizes that it is not intended to deprive the four groups of employees concerned of any wage benefits. It is the intent of the Congress that the precedent established in the Canal Zone in relating Canal Zone wage increases to comparable wage increases in the United States will continue to be followed.

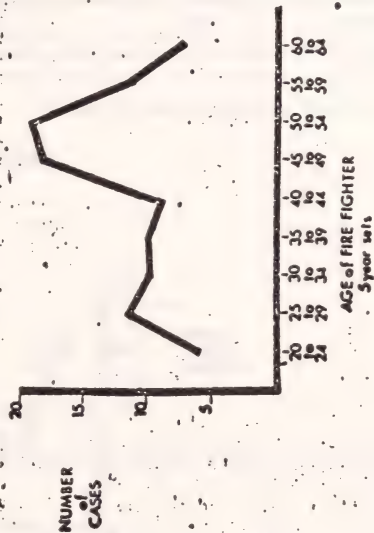
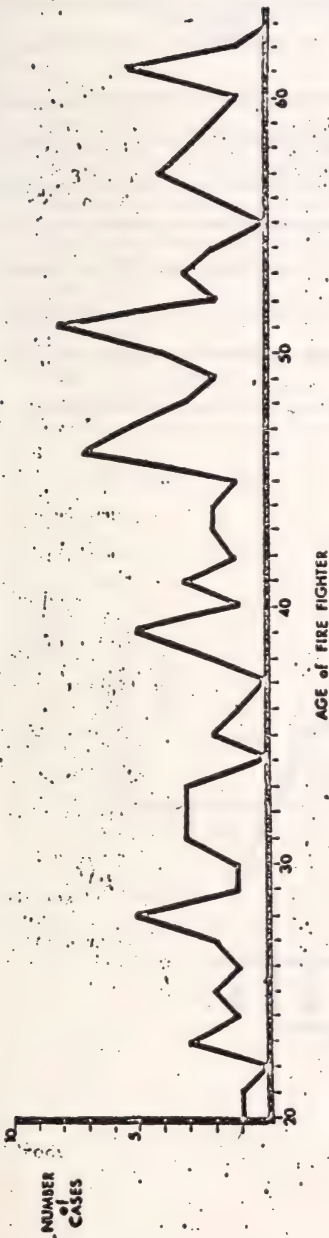
It is in the light of the intent of the Congress as above stated that the repeal of certain provisions of existing law by section 16 (b) is included in the conference agreement.

With respect to the amendment of the House to the title of the Senate bill, the committee of conference recommends that the Senate recede from its disagreement to the amendment of the House to the title of the Senate bill and agree to the same. Such title of the conference substitute as proposed by the House amendment is as follows:

An Act to implement item 1 of a Memorandum of Understandings attached to the treaty of January 25, 1955, entered into by the Government of the United States of America and the Government of the Republic of Panama with respect to wage and employment practices of the Government of the United States of America in the Canal Zone.

**TOM MURRAY,
JOHN YOUNG,
ROBERT W. HEMPHILL,
RALPH J. SCOTT,
EDWARD H. REES,
G. CUNNINGHAM,
DAVID DENNISON,**

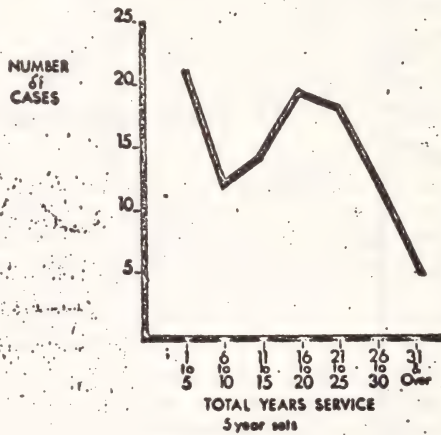
Managers on the Part of the House.



Service	Heart Attack Deaths	Fighting Fire Deaths	Other Duty Deaths	Total
1-5	--	14	7	21
6-10	3	7	2	12
11-15	4	7	3	14
16-20	11	7	1	19
21-25	14	3	1	18
26-30	9	3	--	12
31-over	4	--	1	5
Total	45	41	15	101

Years of service, cause of death

TABLE C

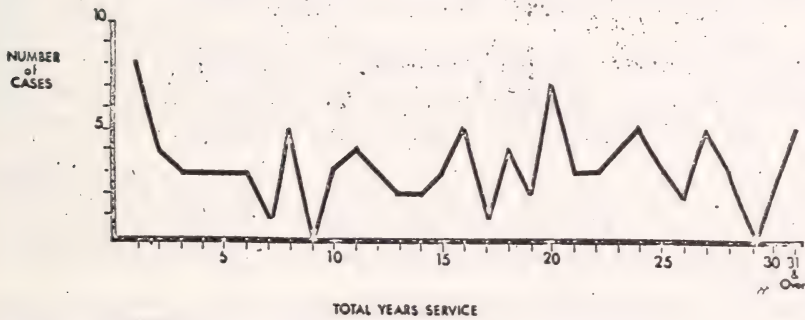


GRAPH G

Age	Heart Attack Deaths	Fighting Fire Deaths	Other Duty Deaths	Total
20-24	--	4	2	6
25-29	--	8	3	11
30-34	1	7	2	10
35-39	--	8	2	10
40-44	4	3	2	9
45-49	14	4	--	18
50-54	12	4	3	19
55-59	7	3	1	11
60-over	7	--	--	7
Total	45	41	15	101

Age, cause of death

TABLE D



GRAPH H

Mr. GRAHAM. However, we do have two affiliated locals who desire to bring to the attention of the committee problems of concern to them.

With your permission I would like to pass on to that part of our testimony.

I would like to introduce to you——

Mr. MURPHY. We will put that in the record.

Mr. GRAHAM. I would like to introduce the vice president of the Canal Zone Central Labor Commission, Metal Trades Council and member of the International Association of Machinists & Aerospace Workers, Local 91, Mr. Mark Tartar.

STATEMENT OF MARK TARTAR

Mr. TARTAR. Mr. Chairman and members of the committee, my name is Mark Tartar, vice president of the Central Labor Union and Metal Trades Council.

The purpose of my appearance before this committee is to seek your help and support in obtaining legislation to combine civil service and railroad retirement benefits for 30 employees of the Panama Canal Company.

Combining railroad retirement benefits with civil service benefits is not a new concept. In 1948, the Senate passed a bill, S. 2326, pertaining to the Alaska Railroad Retirement Act of June 29, 1936.

It authorized and directed the transfer of employee retirement credits to the Civil Service Retirement and Disability Fund. Those transferred credits applied to the disparity between service pertaining to the Alaska Railroad and tenure pertaining to civil service after those employees became civil service employees.

In effect, there are 30 employees of the Panama Canal Company serving the railroad and other company units who formerly had specific tenure of employment with class A railroads in the United States under the provisions of the Railroad Retirement Act, as amended.

The list of employees involved indicates that the ages of the respective American citizens range from 42 to 63 years. As a practical matter, with rare exceptions, not one of these employees can regain any class A railroad status in the continental United States where seniority rights of the class A railroads eliminate any possibility of being rehired.

Furthermore, the passage of time while each of the employees has served the United States and the Panama Canal Company precludes any hope of achieving remediable compensable benefits through railroad retirement. Consequently, unless the Congress acts to correct the disparities which exist these particular former railroad employees will lose retirement income under both systems.

We are seeking a transfer of funds and credits from one Federal system to another Federal system. The passage of specific legislation correcting the disparity by consolidating the two forms of tenure will create no cost to the taxpayers of the United States or add burdens to the fiscal requirements of subsidies by the Congress.

During the last 5 years, we 30 employees have had legislation introduced, H.R. 14939 and H.R. 4201, to combine the two retirement credits, but we were not successful. On October 1, 1979, the

Panama Canal Company will relinquish control over the Panama Railroad. At that time, a number of the 30 employees will either have to or wish to retire.

Therefore, it is respectfully requested that we be included in the implementing legislation or remedial legislation be proposed by this committee to merge our railroad retirement tenures with our civil service tenures into continuous tenure for civil service retirement benefits.

Thank you very much.

Mr. MURPHY. Thank you.

Mr. GRAHAM. Mr. Chairman, our second presentation will be by Mr. Ralph Sheppard, president of the American Federation of Teachers, Local 29.

STATEMENT OF RALPH SHEPPARD

Mr. SHEPPARD. Mr. Chairman, if I am out of order at this time, I had been told I was scheduled for a later time, but certainly we will be glad to comply with whatever time you desire.

Mr. MURPHY. Take whatever time you can, Mr. Sheppard.

Mr. SHEPPARD. I certainly intend to.

Gentlemen of the committee, I am Ralph Sheppard, president of the Canal Zone Federation of Teachers, Local 29, American Federation of Teachers.

Although this section of testimony deals with specific problems of our educational community, it is not in any way intended to imply that our Federation of Teachers does not support completely the previously submitted position of the CLU-MTC with which we are affiliated.

The initial point which I desire to present is support of section 321 of the administration bill regarding protection of the rights of transferred employees.

As you know, article X of the Panama Canal Treaty states that the terms and conditions of employment will in general be no less favorable to persons already employed by the Panama Canal Company or Government prior to the treaty.

The fact that this article does not protect employees who will be transferred to Department of Defense functions has already been used to guide decisions relating to pay, working conditions, and other labor benefits in an adverse manner.

I strongly urge that section 321 of the administration bill be broadened to grant complete protection to transferred employees by including continuation of the Washington, D.C., pay system, including future raises for the present Canal Zone educators. Additionally, the Department of Defense has swung a broad scythe to cut other benefits which were obtained after many years of efforts.

The stand of the Department of Defense is that since other DOD teachers do not presently have sabbatical leave, the Canal Zone teachers also shall not continue to have sabbatical leave. At the present time, sabbatical leave at half pay has been granted to Canal Zone teachers after completion of 6 years of service.

The purpose of sabbatical leave is, of course, to allow our teachers to upgrade their educational knowledge in accordance with new techniques that are being developed. The educational system must not be interred in a state of immobility. If our teaching staff does

not continue to educate themselves, it is our whole system, especially the students, who will suffer.

The justification for sabbatical leave may be found in almost any publication by or for professional educators. In addition, the cost for the school system is practically self-sustaining due to the fact that the teacher who takes advantage of sabbatical leave is probably near or at the top of the pay scale while the replacement hired for the sabbatical year is usually a teacher at the entry level. Savings between the two salaries will almost compensate for the half salary that is paid to the recipient of sabbatical leave.

An additional deprivation of benefits is the extension of the school year from 184 to 190 days. Although the Department of Defense has offered additional compensation for these days, the overseas location of our teachers and the scheduling of the school calendar again serves to prevent teachers from continuing updating their education.

Colleges and universities in the United States do not alter their summer schedules to fit the whims of other scheduling agencies. Thus, early starting dates and late release dates seriously affect individual rights.

The proposed implementing legislation does not provide for housing for the personnel being transferred to the Department of Defense or other executive agencies after the initial 5 years of the treaty. This matter should be considered in order to provide either housing or adequate housing allowances for those transferred employees after this 5-year period.

An adequate housing allowance would be considered the difference between the Panama Canal Commission housing and utilities rates and the costs of comparable housing and utilities on the local economy.

Section 323 deals with the authorization of educational travel benefits for dependents of commission personnel. Again, the proposed implementing legislation is providing different treatment to Panama Canal Commission employees and the employees who are being transferred to DOD or other executive agencies. Present employees who will be transferred should be extended the same entitlement.

President Carter emphasized that quality of life in this area should not be lessened. Although operation of the Canal Zone College has been authorized by the Department of Defense for the immediate future, it appears that long range operation is not, in fact, assured. Loss of this facility would certainly be considered a decrease in the quality of life that is presently enjoyed in this area. Therefore, we ask that statutory authorization be provided in this legislation for future continuing operation of the Canal Zone College.

I draw your attention to section 325, "Early Retirement Eligibility." Over the past several decades, it has been generally recognized that teachers do move from State to State, community to community, and from local or State to Federal service. Many States, at least 36, and the District of Columbia have provided legislation to allow teachers to buy into the pension system of the area into which they move.

I have submitted to Mr. Modglin additional documents to be entered into the record on this area.

Mr. MURPHY. Without objection, they will be included in the record along with your full statement.

[The documentation follows:]

LAWS RELATING TO CIVIL SERVICE RETIREMENT

[PUBLIC—No. 111—66th CONGRESS]

[H.R. 5818]

An Act For the retirement of public-school teachers in the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within sixty days after the passage of this Act, there shall be deducted and withheld from the basic salary of every teacher in the public schools of the District of Columbia an amount computed to the nearest tenth of a dollar that will be sufficient, with interest thereon at 4 per centum per annum, compounded annually to purchase, under the provisions of this Act, an annuity equal to 1 per centum of his average annual basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, payable monthly throughout life, for every such teacher who shall be retired, as herein provided.

The deductions herein provided for shall be based on such annuity table as the Secretary of the Treasury shall direct, and shall be varied yearly to correspond to any change in the basic salary of the teacher: *Provided, however,* That said deductions shall in no case exceed 8 per centum of his annual basic salary: *And provided further,* That when the basic salary exceeds \$1,500 the deductions shall be made as on a basic salary of \$1,500.

The Secretary of the Treasury shall cause to be filed with the Board of Education on September 10 of each year a certificate showing the amount of deduction to be made from the salary of each teacher during the year, said deduction to be made in equal amounts, one to be deducted for each school month. A similar certificate shall be filed not later than the 15th day of each calendar month to cover cases of new entrants. No deduction shall be made from less than an entire month's salary.

SEC. 2. That the amount so deducted and withheld from the basic salary of every teacher shall be deposited in the Treasury of the United States, and shall be credited, together with interest at 4 per centum per annum, compounded annually, to an individual account of the teacher from whose salary the deduction is made. The fund thus created shall be held and invested by the Secretary of the Treasury until paid out as hereinafter provided, and the income derived from such investments shall constitute a part of said fund for the purpose of carrying out the provisions of this Act.

SEC. 3. That any teacher who shall have reached the age of sixty-two may be retired by the Board of Education on its own motion, or shall be retired if application is made by the teacher. Any teacher who shall have reached the age of seventy shall be retired unless in the judgment of two-thirds of the Board of Education such teacher should be longer retained for the good of the service.

SEC. 4. That any teacher who shall have reached the age of forty-five, or who shall have taught continuously for fifteen years in the public schools of the District of Columbia, and who by reason of accident or illness not due to vicious habits has become physically or mentally disabled and incapable of satisfactorily performing the duties of teacher, may be retired by the Board of Education under the provisions hereinafter stated.

SEC. 5. That following the passage of this Act every teacher who shall be retired under the provisions of section 3 or section 4 hereof shall receive during the remainder of his life an annuity composed of (1) a sum equal to 1 per centum of his average basic salary received since the passage of Public Act Numbered 254, approved June 20, 1906, for each year of his whole term of service, and (2) an additional sum of \$10 for each year of said service, such annuity to be payable monthly and to cease and determine at his death.

SEC. 6. That the annuity of a teacher retired under the provisions of section 3 hereof shall not be less than \$480, and the annuity of a teacher retired under section 4 hereof shall not be less than \$420.

SEC. 7. That the second part of the annuity provided for by section 5 hereof shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid; and if the deductions

from a teacher's salary made under section 1 and section 2 hereof with accumulated interest, shall be insufficient to pay the first part of the annuity provided for in section 5 hereof, the deficiency shall be paid by appropriations from the same fund as the current expenses of the District of Columbia are now paid or may hereafter be paid.

SEC. 8. That in computing length of service of retiring teachers credit shall be given, year for year, but not to exceed ten years, for public-school service or its equivalent outside the District of Columbia.

No sum shall be paid to any teacher upon his retirement under the provisions of section 3 hereof unless he shall have been employed as a public-school teacher continuously in the District of Columbia from the time of his attainment of the age of fifty-two years.

No sum shall be paid to any teacher upon his retirement under the provisions of section 4 hereof unless he shall have been employed continuously as a teacher in the public schools of the District of Columbia for ten years immediately prior to his retirement.

When the average basic salary exceeds \$1,500, the first part of the annuity provided for in section 5 hereof shall be based on an average basic salary of \$1,500.

SEC. 9. That upon separation of any teacher from the service of the public schools of the District of Columbia prior to the age of sixty-two years, except for disability, as provided in section 4 hereof, he shall receive the amount of his deductions, together with the interest then credited thereon, as provided in section 2 hereof.

No teacher who shall, after withdraw the amount of his deductions under this section shall, after reinstatement, be entitled to the benefits under section 6 unless he shall have served at least ten years after such reinstatement. In case of his reinstatement in the service of the public schools of the District of Columbia, the monthly deductions thereafter from his salary shall be computed as herein provided and from his age at the date of such reinstatement.

SEC. 10. That in case of the death of a teacher while in the service, the amount of his deductions, together with the interest then credited thereon, as provided in section 2 hereof, shall be paid to his legal representatives.

In case of the death of an annuitant before he shall have received annuity payments equal to the amount of his deductions, together with the interest credited thereon, as hereinbefore provided, the balance thereof remaining to his credit at the date of his death shall be paid to his legal representative.

SEC. 11. That the provisions of this Act shall apply to all teachers who were on the rolls of the public schools of the District of Columbia for the month of June, 1919, if otherwise eligible.

SEC. 12. That every teacher who shall continue in the service of the public schools of the District of Columbia after the passage of this Act, as well as every person who hereafter may be appointed, to a position as teacher in the public schools of the District of Columbia, shall be deemed to consent and agree to the deductions made and provided for herein, and the salary, pay, or compensation, which may be paid monthly or at any other time, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for all services rendered by such teacher during the period covered by such payment, except his claim for the benefits to which he may be entitled under the provisions of this Act, notwithstanding the provisions of said Public Act Numbered 254, approved June 20, 1906, and of any other law, rule, or regulation affecting the salary, pay, or compensation of the teachers employed in the service of the public schools of the District of Columbia.

SEC. 13. That nothing in this Act shall be construed to prevent the discharge of any teacher at any time in the discretion of the Board of Education of the District of Columbia under the provisions of law.

SEC. 14. That the term "teacher" under this Act shall include all teachers permanently employed by the board of education in the public day schools of the District of Columbia, including the superintendent of public schools, the assistant superintendent, all supervisors and directors of instruction, group principals, principals, special teachers, and librarians therein; the term "basic salary" shall be construed to mean the lowest salary of the class in which the teacher is placed; and whenever the pronoun "his" occurs in this Act it shall be construed to mean both male and female teachers.

SEC. 15. That the Secretary of the Treasury shall prepare and keep all needful tables, records, and accounts required for carrying out the provisions of this Act. The records to be kept shall include data showing the mortality experience of the teachers in the service of the public schools of the District of Columbia and the rate of withdrawal from such service, and any other information pertaining to such service that may be of value and may serve as a guide for future valuations and

adjustments of the plan for the retirement of teachers. The Secretary of the Treasury shall make a detailed comparative report annually to Congress showing all receipts and disbursements under the provisions of this Act, together with the total number of persons receiving annuities and the amount paid them. And the Secretary of the Treasury shall have made every third year after the passage of this Act an actuarial valuation of this retirement fund and the operation thereof, which shall show the financial condition of the fund, and shall report the findings of such investigation to Congress at the opening of the following session.

SEC. 16. That in order to carry out the provisions of this Act during the fiscal years ending June 30, 1920, the sum of \$30,000, including not more than \$3,000 for clerical and other services and all other expenses, is hereby appropriated from the revenues of the District of Columbia, and the Treasury of the United States in the proportion authorized by law. Thereafter the Secretary of the Treasury shall include in his annual estimate of appropriations a sum sufficient to carry out the provisions of the Act. No officer or employee receiving a regular salary or compensation from the Government shall receive any additional salary or compensation for any service rendered in connection with the system of retiring teachers provided for by this Act.

SEC. 17. That the Secretary of the Treasury is hereby authorized to perform, or cause to be performed, any or all acts and to make such rules and regulations as may be necessary and proper for the purpose of carrying the provisions of this Act into full force and effect.

SEC. 18. That none of the money mentioned in this Act shall be assignable, either in law or equity, or be subject to execution or levy by attachment, garnishment, or other legal process.

SEC. 19. That the provisions of this Act shall not apply to any teacher who receives an annuity from any State or municipality other than the District of Columbia.

Mr. SHEPPARD. You may, of course, question why this matter is being broached as a part of the implementing legislation. Actually, the buy-in proposal was introduced in the 95th Congress as H.R. 7761. We have been informed that the Postal and Civil Service Committee, after due consideration, recommended that these legislative goals should be considered as a part of the implementing legislation. Because a large percentage of the teachers in the Canal Zone are in their late forties or fifties they can ill afford to lose these credible years of service with their futures equally obscured in the Canal Zone or in the Panama area.

This legislation will encourage teachers to remain in the Panama area knowing that they will have enough total years for an annuity on which they may at least survive. This particular item cannot be overemphasized as being one of our prime interests. Additional written justification is attached to be submitted for the record.

Section 330(e) states that section 1b of the act of April 14, 1966 (20 U.S.C. 903(c)) and section 6a of the act of July 17, 1959 (20 U.S.C. 904(a)(2)) are inapplicable to teachers who are presently employed by the Canal Zone Government immediately prior to the effective date of the treaty and are transferred to the Department of Defense Overseas Dependent School System.

This particular change is designed to allow the Department of Defense to compromise between the present Washington, D.C., pay system which we are on and the DOD pay system.

Compromise is not considered satisfactory.

In addition, we desire that it state that the present pay system of Washington, D.C., schools be established as the permanent pay base for all eligible teachers. Also, this section should cover not only teachers, but should include counselors, librarians, and school officers.

I have attached Report No. 2149 from the 85th Congress, 2d session, House of Representatives, and in this report it clearly indicated that it was not the intent of Congress that any of the teachers in the Canal Zone should lose their benefits at that time when they changed from the civil service merit system to the Canal Zone merit system for the pay base, and we equally desire that we be maintained on the Washington, D.C., base at this time.

I thank you.

[The full statement follows:]

PREPARED STATEMENT OF RALPH SHEPPARD

Although this section of testimony deals with specific problems of our educational community, it is not in any way intended to imply that our Federation of Teachers does not support completely the previously submitted position of the CLU-MTC with which we are affiliated.

The initial point which I desire to present is support of Section 321 of the Administration Bill regarding protection of the rights of transferred employees. As you know, Article X of the Panama Canal Treaty states that the terms and conditions of employment will in general be no less favorable to persons already employed by the Panama Canal Company or Government prior to the treaty. The fact that this article does not protect employees who will be transferred to Department of Defense functions has already been used to guide decisions relating to pay, working conditions and other labor benefits in an adverse manner. I urge very strongly that Section 321 of the Administration Bill be broadened to grant complete protection to transferred employees by including continuation of the Washington, D.C., pay system, including future raises, for the present Canal Zone educators. Additionally, the Department of Defense has swung a broad scythe to cut other benefits which were obtained after many years of efforts.

The stand of the Department of Defense is that since other D.O.D. teachers do not presently have sabbatical leave, the Canal Zone teachers also shall not continue to have sabbatical leave. At the present time, sabbatical leave at half pay has been granted to Canal Zone teachers after completion of six years of service. The purpose of sabbatical leave is, of course, to allow our teachers to up-grade their educational knowledge in accordance with new techniques that are being developed. The educational system must not be interred in state of immobility. If our teaching staff does not continue to educate themselves, it is our whole system, especially the students, that will suffer. The justification for sabbatical leave may be found in almost any publication by or for professional educators. In addition, the cost for the school system is practically self-sustaining due to the fact that the teacher who takes advantage of sabbatical leave is probably near or at the top of the pay scale while the replacement hired for the sabbatical year is usually a teacher at the entry level. Savings between the two salaries will almost compensate for the half salary that is paid to the recipient of sabbatical leave.

An additional deprivation of benefits is the extension of the school year from 184 to 190 days. Although the Department of Defense has offered additional compensation for these days, the overseas location of our teachers and the scheduling of the school calendar again serves to prevent teachers from continually up-dating their education. Colleges and Universities in the United States do not alter their summer schedules to fit the whims of other scheduling agencies. Thus, early starting dates and late release dates seriously affect individual rights.

The proposed implementing legislation does not provide for housing for the personnel being transferred to the Department of Defense or other executive agencies after the initial five years of the treaty. This matter should be considered in order to provide either housing or adequate housing allowances for those transferred employees after this five-year period. An adequate housing allowance would be considered the difference between the Panama Canal Commission housing and utilities rates and the costs of comparable housing and utilities on the local economy.

Section 323 deals with the authorization of educational travel benefits for dependents of Commission personnel. Again, the proposed implementing legislation is providing different treatment to Panama Canal Commission employees and the employees who are being transferred to D.O.D. or other executive agencies. Present employees who will be transferred should be extended the same entitlement.

President Carter emphasized that quality of life in this area should not be lessened. Although operation of the Canal Zone College has been authorized by the

Department of Defense for the immediate future, it appears that long range operation is not, in fact, assured. Loss of this facility would certainly be considered a decrease in the quality of life that is presently enjoyed in this area. Therefore, we ask that statutory authorization be provided in this legislation for future continuing operation of the Canal Zone College.

I draw your attention to Section 325 "Early Retirement Eligibility." Over the past several decades, it has been generally recognized that teachers do move from state to state, community to community, and from local or state to federal service. Many states (at least 36) and the District of Columbia have provided legislation to allow teachers to buy into the pension system of the area into which they move.

You may, of course, question why this matter is being broached as a part of the implementing legislation. Actually, the buy-in proposal was introduced in the 95th Congress as H.R. 7761. We have been informed that the Postal and Civil Service Committee, after due consideration, recommended that these legislative goals should be considered as a part of the implementing legislation. Because a large percentage of the teachers in the Canal Zone are in their late 40's or 50's they can ill afford to lose these creditable years of service. This legislation will encourage teachers to remain in the Panama area knowing that they will have enough total years for an annuity on which they may at least survive. This particular item cannot be over-emphasized as being one of our prime interests! (Additional written justification is attached to be submitted for the record.)

Section 330(e) states that Section 1b of the act of April 14, 1966 (20 USC 903(c)) and section 6a of the act of July 17, 1959 (20 USC 904(a)(2)) are inapplicable to teachers who are presently employed by the Canal Zone Government immediately prior to the effective date of the treaty and are transferred to the Department of Defense Overseas Dependent School System.

In addition, we desire that it state that the present pay system of Washington D.C. schools be established as the permanent pay base for all eligible teachers. Also, this section should cover not only teachers, but should include counselors, librarians and schools officers. I desire to submit for the record Report No. 2149, 85th Congress, 2nd Session, House of Representatives. This report clearly defines the intent of Congress that Canal Zone Teachers should not be separated from the Washington D.C. pay base.

I thank you.

QUESTIONS CONCERNING H.R. 7761

Purchase of creditable previous service by Canal Zone Government Schools Division employees

Number of C.Z.G. Schools Division employees with creditable prior service	360
Average length of government service (years).....	12
Average number of years of creditable services (years).....	5
Average salary at time of first employment	\$9,000

If every single eligible person bought every year of service to which he was eligible and paid the interest for ten years time, the total paid in would be \$2,520,000. The matching funds could be assessed against the agency—in this case the Canal Zone Government—or the employees could be required to pay the full amount, their own 7 percent plus the matching funds ordinarily paid by the agency.

At any rate, the theoretical maximum cost to the government would be on the order of 2½ million dollars. In practice many of the employees would not exercise their option to "buy in" for previous service. The figures above include data for many teachers who are not career oriented (army wives for example who have only 2 or 3 years service and routinely withdraw their contributions from the retirement fund when they leave after their husband's tour of duty). Some would not have the cash with which to purchase retirement credit. Others would simply feel that alternative investment possibilities were more attractive. Those who already have full retirement credits might see little need for additional annuity investment. Only those in danger of rifling actions who were also close to retirement levels would be sure to purchase credit enough to qualify them for retirement.

In general, low level employees in terms of years of service and salary would have little incentive to "buy in". For employees with 25 to 30 or more years of service, "buy in" would be of mixed interest and would have to compete with other investments or needs for cash. Those employees with 12-15 years service and 5 to 8 years of creditable service would find the option most attractive—about 150 employees.

A realistic estimate of exercised options would put estimated costs to employees at about 1¼ million with corresponding costs to the Federal Agency (assuming the agency also has to pay interest).

Question. Why do you want H.R. 7761 to be passed or made a part of the Implementing Legislation?

Answer. Because most of the teachers in the Canal Zone are in their late 40's or 50's, they can ill afford to lose years of service that could be counted toward retirement. H.R. 7761 will give teachers the security of knowing that they can work 5 or 10 more years (or as long as U.S. Teachers are needed in the Panama Canal Area) and that they will have enough total service years for an annuity on which they can at least "survive". If H.R. 7761 is not passed or if it is not placed in the Implementing Legislation, it might be to the advantage of the Canal Zone teacher to leave immediately, return to the state where he formerly worked, buy back his retirement years there, pay in for the number of years he has worked in the Canal Zone (36 States and the District of Columbia grant this privilege), and teach for the remaining productive years of his professional career.

For several years teachers coming to the Canal Zone have been granted credit on the salary schedule up to 10 years of their prior teaching experience. The salary schedule and the granting of prior service credit are based on the Washington D.C. teachers pay bill to which the Canal Zone teachers have been tied for many years. Canal Zone teachers are now requesting that this public law be amended in order to give them the same privilege of buying into the retirement system that the teachers of Washington D.C. have enjoyed since the 1920's.

The Canal Zone teachers are not asking for a handout. Now with impending changes in the Canal Zone, they are simply asking that this oversight be corrected and that the full privileges of the D.C. teachers (specifically the buying into the retirement system), be granted.

RETIREMENT PURCHASE OPTION FOR CANAL ZONE EDUCATORS—H.R. 7761

What is the effect of the proposed legislation?

H.R. 7761 amends title 5, United States Code, to allow educators employed by the Canal Zone the option to purchase retirement credit in their current U.S. Civil Service Retirement plan for up to ten years of previous service in public schools other than the Canal Zone.

Why is the legislation sought?

Teaching is an unusually mobile profession. Such mobility is generally regarded as an advantage to society, but works a special hardship on the profession. Seventy percent of the States plus the District of Columbia already have credit purchase options in their retirement systems. Consonance with general practices in the teaching profession is an objective.

By legislation, administrative policy and long term precedent, Canal Zone teachers are paid in accordance with Washington, D.C. salary schedules. Job titles, descriptions, working duties and length of school year all established with reference to Washington, D.C. practices. Canal Zone teachers are *not* allowed collective bargaining rights but are assigned by the Canal Zone Government the D.C. duties and rights except for the retirement credit purchase option. Equity with the D.C. model is an objective.

Who would be affected by H.R. 7761?

Of the 500 teachers and administrators of the Canal Zone Government Schools Division, about half would be able to purchase retirement credit and approximately one fourth could be expected both to qualify for retirement and to exercise that option immediately. All would benefit, however, in that the impact of anticipated reductions in force would be significantly ameliorated among junior staff members. (It should be noted that teachers do not qualify under the new treaty for transfer to continental United States positions and that the overseas dependent's schools are currently undergoing reductions in force, virtually eliminating the only transfer possibility.)

What would be the costs of the legislation?

The costs to the government would be slight. The teachers would purchase the credit by making deposits equalling the amount they would have paid into the retirement system had they joined earlier, plus interest that would have accumulated. Administrative costs might be involved. Actuarial factors in a retirement plan are estimates, but indications are that costs to Civil Service Retirement should total less than one million dollars over the next thirty years.

The costs might be fully offset by savings derived from this action by the Canal Zone Government and/or the Department of Defense. In fact, the Department of Defense should realize one million dollars in savings on salaries during the first 3 years of operation of its schools in Panama.

How is this legislation related to the 1977 Treaty with Panama?

Since easier retirement would reduce the impact of the treaty on Canal Zone teachers, the legislation would tend to encourage their support of the treaty. The treaty envisions transfer of all Canal Zone teachers to the Department of Defense school system. Since DOD salary schedules are significantly lower than Canal Zone government salaries at the upper levels, encouraging retirement would save significant sums of money for the DOD. There is a current oversupply of teachers in the Canal Zone. There is no shortage of teacher recruits in the job market. The benefits would be all plus. Implementation of the treaty would be facilitated and the U.S. Government's assurance of "generous retirement benefits for affected employees" would be honored.

Who supports the legislation?

The Canal Zone Schools administration; the Canal Zone Civic Councils; the American Federation of Government Employees; and the American Federation of Teachers; the Council of Chief State School Officers; the National Education Association, and the Civil Affairs Bureau, Canal Zone Government have all endorsed the concept embodied in H.R. 7761.

What arguments are there against this proposal?

It might be claimed that a precedent would be established since an exception to usual civil service procedures is requested. Such an objection would not appear to be valid. First, the precedent already exists in the fact that the Washington, D.C., teachers may never have been implemented till *after* the separate retirement system was set up—it was a matter of months between passage & separation . . . In fact, the wording of H.R. 7761 is essentially a repeat of the earlier enabling legislation that unfortunately did not include "Canal Zone" as well as "District of Columbia" in its wording. Canal Zone educators ask only equity, not precedence.

Secondly, the effect of the legislation would be self limiting. Since the new treaty will eliminate the Canal Zone Schools, the effect of the legislation will be temporary, justified by the extraordinary context of the Canal Zone, and at any rate confined to a few people, protecting them from tremendous adjustment losses at little or no cost of the government.

Should the substance of H.R. 7761 be included as part of the treaty enabling legislation?

For thirteen years, negotiations on the current treaty have made it impossible for Canal Zone teachers to gain equity with their Washington, D.C. counterparts since "treaty negotiations in progress" blocked consideration of such legislation. Now that a treaty has been ratified, including purchase of retirement credit for educators would synchronize and restrict the application of the retirement purchase option during the short time frame involved in the transfer of the Canal Zone Schools to Department of Defense Dependents' Schools. Fairness to Canal Zone educators demands action before it is irrevocably too late. The savings and the convenience accruing to Department of Defense Dependents' Schools warrants the inclusion of H.R. 7761 as part of the treaty enabling legislation.

CANAL ZONE GOVERNMENT,
CANAL ZONE,
Balboa, Canal Zone, January 4, 1979.

Mr. RALPH SHEPPARD,
President, Local No. 29, AFT,
Balboa, Canal Zone.

DEAR MR. SHEPPARD: The College faculty wishes to thank you and Local No. 29 for your concern and efforts to save CZC. Our problems with tuition under DODDS appear to have been solved for the immediate future because higher echelons in Panamanian and the military made a concerted effort. Bureaucratic clout made the difference on this one, but it will take more than this to help us in the newest "crisis".

Our latest problem is a political threat that could prove dire. The congressional delegation from Florida is seeking to exclude CZC from the implementing legislation. Apparently, they envision supplanting us, in our own facilities, with an ex-

panded version of the Florida State C.Z. Program. We believe that this is a poor educational scheme, and that if it succeeds, the quality of life for local Federal employees will be considerably decreased, a serious violation of the intention of the Treaties. We enclose a copy (more available on request) of a "why us and not them" statement, which presents our position.

We have two requests to make of Local No. 29 and, if possible, the CLU: 1) That you urge local Florida voters to write congressmen protesting this treat to local higher education, and 2) that you ask Mr. Shanker and the national organization to lobby against any attempt to write the College out of the implementing legislation. There are no votes at stake in Florida over this matter, and serious outside opposition might affect the outlook of Florida's Senators and Representatives.

We have been told that this is the most serious threat to survival that we have faced. Recently the Civil Affairs Director received a letter from Dr. Coyne (on-campus head of the CZ-FSU Program and probably the mover and shaker on this) stating that he was making efforts to apply in-state tuition rates to all Isthmians. If true, this would amount perhaps to an illegal Florida subsidy to non-Floridians. So there is definitely a movement against the College going on up there. Without help in the political arena, the situation could become critical. AFT support thus could be crucial.

Again, thank you for being a good friend of Canal Zone College. Be assured that we are ready to work and cooperate fully in any efforts you can make.

Fraternally,

H. LORING WHITE,
*President, Faculty Senate,
Canal Zone College.*

Enclosure.

October 13, 1978

Memorandum for the Director, Dependents Education

Subject: Canal Zone College

I. History of the Canal Zone College

The establishment of a 2-year college in the Canal Zone was urged in the Columbia University Teachers College Report of the Survey of the Schools of the Panama Canal Zone. As a result of this report the Division of Schools of the Canal Zone Government established the Canal Zone Junior College, which opened officially in September of 1933.

In April 1934, the Junior College was recognized by the American Association of Junior Colleges.

The Canal Zone Junior College was first accredited by the Middle States Association of Colleges and Secondary Schools in November 1941. In 1962 the Association approved an expanded program and the corresponding appropriate change of name to the Canal Zone College. Under this name the college moved in 1963 to a new campus at La Boca, at the Pacific "mouth" of the Panama Canal.

II. Present Status

The Division of Schools of the Canal Zone Government has the responsibility for the operation of the Canal Zone College. Tuition charges are established by the Rates Branch in the Office of the Financial Vice President of the Panama Canal Company. The rates established for school year 1978-1979 are as follows:

- | | |
|---|--------------------------|
| - For full time agency sponsored students | |
| Agency Contribution | \$ 3,445.00 |
| Student Contribution | 480.00 |
| Recovery of Total Costs plus | |
| pro rated share of variable costs | \$ 3,925.00 |
| - For full time non-sponsored students | \$ 2,240.00 |
| Recovery of 57% of agency rate | |
| - For part time students residing in the | \$ 25.00 per sem. credit |
| Canal Zone or federal employees | |
| residing in the Republic of Panama with | |
| minor exceptions (also audit rate). | |
| - For all other part time students | \$ 65.00 per sem. credit |

Subject: Canal Zone College

October 13, 1978

There are provisions for reducing the non-sponsored tuition rates where financial hardship exists, where three or more children from the same family are enrolled in the system and for religious workers and their dependents.

III. Treaty Day Status

The Treaty with the Republic of Panama assigns the responsibility for the continued operation of the existing educational program to the Department of Defense effective October 1, 1979. An October 5, 1978, memorandum from OASD(C) to the Director, Dependents Education, OASD (MRA&L) directed that a separate tuition rate be established for the Panama schools and that full recovery of costs for educating non-DoD dependents be ensured. In accordance with the memorandum the following tuition rates have been established:

College Full Time	\$ 2,810 per year
College Part Time	88.00 per semester hour
Dormitory (Includes only room charges)	503.45
See Tab 1 and 2 for rate development	

IV. Impact

Representatives from the Canal Zone College, the Division of Schools and the Canal Zone Government have provided impact statements reflecting the results if full cost recovery is implemented.

See Tab 3

V. Alternatives

Alternative proposals have also been provided by the above identified representatives.

See Tab 4

Robert Ferguson

Canal Zone College

FY-80 Tuition Computation

ASSUMPTIONS:

1. Enrollment

400 Full time enrollments

300 Full time equivalent part time enrollments700 Total Full time equivalent enrollments

FTE Computation:

1,116 part time enrollments

x 8.6 average semester hours per year

9598 or

9,600 (rounded) total part time hours

÷ 32 hours average full time load

300 FTE

2. Total Cost

O & M \$1,933,000

Procurement \$ 34,000

(see budget schedule)

3. A full time student is defined as one who enrolls in courses for twelve or more credit hours per semester. All summer session enrollments are classified as part time enrollments.

Canal Zone College

FY-80 Tuition ComputationFull Time Student CostO & M:

\$1,933,000 ÷ 700 FTE = 2,761.43 = \$ 2,762 per year

PROCUREMENT:

\$ 34,000 ÷ 700 FTE = 48.57 = 48 per year

Total full time charge \$ 2,810 per year
(or \$1,405 per semester)

Part Time Student CostO & M:

\$1,933,000 Total Cost

1,104,800 Full time contribution (\$2,762 x 400)

\$ 828,200 Part time contribution

\$ 828,200 ÷ 9,600 part time hours = \$ 86.27 per semester hour

PROCUREMENT:

\$ 34,000 Total Cost

19,200 Full time contribution (\$48 x 400)

\$ 14,800 Part time contribution

\$ 14,800 ÷ 9,600 part time hours = \$ 1.54 per semester hour

Total part time charge \$ 87.81 or
\$ 88.00 per semester hour

CANAL ZONE COLLEGEFY-60 Dormitory Fee Computation

Operating one dorm for 180 days or 36 weeks: (Maximum capacity = 60 students)

Electricity	\$ 10,962
Telephone	150
Custodian	5,000
Para Professionals	9,595
Maintenance and water	<u>4,500</u>
	\$ 30,207

$30,207 \div 60 \text{ students} = \$503.45/\text{yr.}$

$503.45 \div 36 \text{ weeks} = \$13.98/\text{week}$

$503.45 \div 180 \text{ days} = \$2.80/\text{day}$

Department of Defense Dependents Schools
Financial Management Division

Canal Zone College FY80 Budget
(000's)

PERSONNEL:

Salaries	\$ 1,456
Benefits	84
Sub-total	<u>\$ 1,540</u>

GOVERNMENT SERVICES:

Utilities	\$ 103
Custodial and Other	57
Maintenance	57
Phone	11
Civilian Personnel and Finance Service	10
Sub-total	<u>\$ 238</u>

OTHER:

Supplies and Equipment	\$ 69
Home Leave, Vehicle Replacement	33
Minor Construction	50
Miscellaneous	3
Sub-total	<u>\$ 155</u>

Total O & M Costs	<u><u>\$ 1,933</u></u>
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Total Procurement Costs

(Replace and Add Equipment, unit price over \$1,000)	<u><u>\$ 34</u></u>
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Canal Zone College
 Personnel Summary
 FY-80

<u>CATEGORY</u>	<u># PERSONNEL</u>	<u>COST (\$000'S)</u>
Administration & Supervision	3	\$ 121
Permanent Teachers (Includes 2 Counselors, 2 PE teachers, 1 librarian)	29	1,001
Fee teachers	60	210
Summer School	25	40
Clerical	4	55
Student Aids, Assistants		
School year	25	58
Summer	14	13
Teachers, Extra Duty	15	9
Other- (Includes 2 dressing room attendants, 1 grounds person, 1 handyperson)	4	<u>33</u>
Total		<u>\$1,540</u>

CANAL ZONE COLLEGE

Comparative Data (\$000's)

	FY 77 <u>Actual</u>	FY 78 <u>Program</u>	FY 79 <u>Program</u>
PERSONNEL:			
Salaries	\$ 1,153	\$ 1,219	\$ 1,274
Benefits	<u>64</u>	<u>71</u>	<u>75</u>
Subtotal	\$ 1,217	\$ 1,290	\$ 1,349
GOVERNMENT SERVICES:			
Utilities	\$ 68	\$ 76	\$ 77
Custodial & Other	51	57	53
Maintenance	39	46	52
Phone	<u>7</u>	<u>8</u>	<u>9</u>
Subtotal	\$ 165	\$ 187	\$ 191
OTHER:			
Supplies & Equipment	\$ 55	\$ 60	\$ 43
Home Leave,			
Vehicle Replacement	0	0	0
Miscellaneous	<u>3</u>	<u>3</u>	<u>3</u>
Subtotal	\$ 58	\$ 63	\$ 46
GRAND TOTAL	<u>\$ 1,440</u>	<u>\$ 1,540</u>	<u>\$ 1,586</u>

JG:mtch
10/13/78

Canal Zone College

Footnote

1. FY 80 personnel cost includes provision for additional 6 days in school year.
2. FY 80, utilities cost includes provision for added corporate surcharge.
3. FY 80 civilian personnel and finance service allocated on the following basis:

Total estimated cost of \$183,000 based on transfer of 744 personnel.

Approximately 40 of the 744 are associated with the Canal Zone College

$$40/744 \times 183,000 = \$9839 \text{ or } \$10K$$

4. FY 80 home leave:

14 each with 3 dependents @ 2100 = \$29400

5. FY 80 vehicle replacement:

4 each (assuming replacement each four years)
@ 800 = \$3200

Total \$32,600

5. Civilian personnel and finance service, home leave and vehicle replacement costs are not shown in the comparative data schedule as these costs were budgeted by the Civil Affairs Bureau.

(to continued operation of Canal Zone College)

1. Retrench to small junior college transfer program in fewer degree areas (lose community college role).
2. Operate program for part-time students on incremental cost basis as presently done by Panama Canal Company.
3. Divide student enrollment and have full-time students taught by full-time faculty on cost-recovery basis. Form an extension division for part-time students to operate on other than appropriated funds basis. A locally formed non-profit foundation could be organized as the administrative vehicle for such a program of continuing education.
4. Secure subsidy from some other source in federal government in order to retain tuition rates at present levels and to retain present community college role. This might mean additional funding would have to be authorized in implementing legislation.
5. Develop ties with some U.S. college or university that might operate here under contract with DOD with specific educational programs designed to complement and supplement present Canal Zone College program. Library, laboratories, classrooms, and instructional materials in College could be utilized by both institutions.
6. Capitalize on English as second language and other degree programs popular with Panamanian students (such as science and business administration) and develop ties with government of Panama scholarship and training program (such as IFARU) and the two local universities for joint funding. Develop the concept of an inter-american university program sponsored by the U.S. and Panamanian governments.
7. Explore possibilities of supplementary funding for continued operation of the College from private foundations in the U.S. This would no doubt mean ability to further special projects or research interests of a foundation.
8. Close the College.

Impact College

10. The community viewing the tuition rates as an adverse effect upon the "quality of life" in the Canal Zone which is not compatible nor in keeping with the general intent of the Panama Treaty or commitments made to employees who will be needed as work force to implement treaty.

11. Great financial difficulty for students presently receiving a reduced tuition rate. These students have difficulty attending with low rates and a tuition reduction.

The treaty indicates that Canal Zone College will be transferred to DOD. The treaty does not specify that the College will continue in operation for any definite period of time—but it certainly would be expected that it would continue for longer than one year, yet the changes in eligibility and tuition rates now in process by DOD would doom the College within a year.

Similarly the treaty certainly implies that post-treaty conditions will not be greatly different, except for jurisdiction, from prior treaty conditions; but a 100% increase in kindergarten and elementary school tuition rates and a 67 percent increase in secondary school tuition rates does seem a considerable change.

Last year when it appeared that the treaty might go into effect during the 1978-79 school year, it was agreed by DOD schools headquarters that Pan Canal teacher sabbatical leaves for the year would be honored. Now it is indicated that leaves granted by Pan Canal for 1979-80 cannot be honored.

In each situation "laws" governing operation of dependent schools are mentioned, but the specific provisions of such laws are never cited. There appears to be an effort on the part of bureaucrats in Washington at some level to bend the operations in Panama to the present DOD procedures—regardless of the Panama Canal treaties.

The most recent item was indication from DOD school headquarters that upon transfer to DOD present Division full-time employees would not be eligible to teach at Canal Zone College because of the "dual compensation law." It was indicated that dual compensation laws already apply to personnel in all U.S. agencies, but that a ruling by the Comptroller General indicates that the dual compensation statutes do not apply to part-time teaching at Canal Zone College by U.S. civilian employees.

It is seriously doubted that the laws which are referenced are so specific or so restrictive as to require the interpretations which have been made. Rather, it is felt that the interpretations have been tailored to present DOD practices.

It appears that the decisions made by the treaty planners are being implemented by others who are either not aware of the intent of the treaty or who choose to ignore such intent now that the treaty has been ratified and there may be no effective resource for the persons adversely affected. Rather than looking for solutions there seems to be a tendency in Washington to look for problems.

Unless contrary decisions are made at a yet higher level, it appears that the apparent intent of the treaty regarding quality of life in Panama for U.S. citizens—especially as it relates to education—may be seriously altered for the worse.

Mr. MURPHY. Thank you.

Mr. GRAHAM. Mr. Chairman, that concludes the testimony of the Central Labor.

Mr. MURPHY. Mr. Hamilton?

STATEMENT OF FRANK HAMILTON, JR.

Mr. HAMILTON. Mr. Chairman and members of the committee, ladies and gentlemen, my name is Frank Hamilton, Jr.

I represent the International Organization of Master Mates and Pilots, and I am here as a very poor substitute for Capt. Bob Lloyd who is the president of the union and who was unable to make it.

You have been furnished with a 4½ or 5-page introduction of remarks together with some 23-page document entitled the "Revised Panama Canal Commission Department of Defense Labor Relations Policy."

I don't propose to take your time to read either of those.

I would like, however, to request that on page 3 of the written presentation in the second paragraph, third line the reference to Public Law 95-414 be corrected to 95-454, a typographical error which I neglected to correct.

[The statements follow:]

PREPARED STATEMENT OF FRANK E. HAMILTON, JR.

Ladies and Gentlemen: May it please the Committee, my name is Frank E. Hamilton, Jr. I am an attorney with offices at Tampa, Florida; and I specialize in the field of labor relations, representing labor organizations. I am one of the

attorneys representing the International Organization of Masters, Mates & Pilots-ILA-AFL-CIO. For the past several months I have been assisting the various labor organizations which represent employees in the Canal Zone in their efforts in the light of the mandates of the Treaty to come up with an unified labor relations policy providing procedures for the negotiation of collective bargaining agreements and for their enforcement.

In order that the Committee may fully appreciate the problem, I would like first to take you back in time and trace in a most sketchy fashion the history of labor relations in the Canal Zone and the events which bring us to where we are today.

As you know, in 1962 the late President John Kennedy issued Executive Order 10988 which permitted a very limited type of recognition and negotiation between Federal agencies and organizations representing Federal employees. Executive Order 10988 permitted formal recognition without exclusive recognition and permitted consultation as distinguished from collective bargaining. Executive Order 10988 has been applied in this manner to groupings of employees in the Canal Zone, and is the system under which some 22, or thereabouts, labor organizations attempt to provide some measure of representation of their membership.

In 1969 Executive Order 11491 was issued and it provided for exclusive recognition and a substantial measure of collective bargaining. It contained provisions permitting agency or department to opt out from under its coverage on the basis of national security; and this option was exercised by the Panama Canal Government. Executive Order 11491 has not been applied to Canal Zone employees.

This disparity in treatment as compared with other employees of the Federal Government, coupled with the geographic separation and a variety of other factors, led to employee unrest which threatened to close the Canal. As a result, there was a memorandum of understanding issued by the Governor on March 20, 1976 which provided an agreement. "To initiate action immediately to formulate a labor management committee to commence a study, with full participation of unions of all ramifications of application of E.O. 11491, as amended, or other mutually acceptable form of collective bargaining with employees of the Panama Canal Company and Canal Zone Government."

Following this, the employee organizations attempted to meet to formulate a mutually acceptable form of collective bargaining for employees of the Panama Canal Company and the Canal Zone Government. Then came the Treaty.

As you know, Article X, Section 9, of the Treaty provides:

"(a) The right of employees to negotiate collective contracts with the Panama Canal Commission is recognized. Labor relations with employees of the Panama Canal Commission shall be conducted in accordance with forms of collective bargaining established by the United States of America after consultation with employee unions.

"(b) Employee unions shall have the right to affiliate with international labor organizations."

Following this impetus, there were further meetings between the various labor organizations and representatives of the various departments, agencies, etc. From these meetings there was presented to the Canal Zone labor organizations on May 10, 1978 a document from Civilian Personnel Policy Coordinating Board of the Canal Zone on "Proposed Consultation on Labor Options." The May 10, 1978 document contained five basic options. I will not bore you with the details of these five options. I will tell you that each of them was carefully and exhaustively considered by the various labor organizations representing employees of the Canal Zone; and the majority came up with a proposal which they labeled as "Option 6". Such was reviewed and refined, and through the auspices of the AFL-CIO, was presented as a consensus of proposals acceptable to the organizations representing Canal Zone employees.

Throughout the Federal Service a problem with Executive Order 11491 had been the absence of an independent agency to monitor and enforce the spirit of the Executive Order. In October of 1978, Public Law 95-454 was enacted (92 stat. 1191) and Title VII provided for Federal Service Labor-Management relations, among other things, creating "The Federal Labor Relations Authority." The administration bill, HR 1716, in Title III, Section 303, provides that the provisions of Chapter 71 of Title V of the United States Code (this is the part of Civil Service Reform Bill dealing with labor-management and employee relations), will not apply to employees of the Commission, but mandating: "In lieu thereof, the President shall establish a form of collective bargaining, applicable to the Commission's employees; into which is incorporated the substance of sections 7102, 7106, 7116, 7120, and 7131. The form of collective bargaining so established shall contain such other necessary provisions, and shall be administered, so as to provide the Commission's employees

with the right to bargain collectively under the same conditions and with respect to the same subject matter the obtains where that right is exercised generally in the Federal service within the continental United States."

Most of the points being presented here today were presented to the committee considering that bill on Friday, February 16, 1979.

As related earlier, "Option 6" had been furnished through the AFL-CIO. After its receipt, there were further meetings between representatives of the affiliated unions and of the agencies to explain and discuss proposals with had been made. During the first week of January of 1979, there was then furnished to the unions a new document entitled "Joint Panama Canal Commission/Department of Defense Labor Relations Policy" which incorporated some provisions of the proposals in "Option 6", ignored others and proceeded in exactly the opposite direction with still others. The latest proposal from management was reviewed by the affected labor organizations in a meeting at the AFL-CIO offices in Washington on January 25; and I was asked to prepare for distribution a revised "Option 6" incorporating as much of "Joint Policy" as possible without doing violence to the concepts of "Option 6." The revised "Option 6" Revised Joint Panama Canal Commission/Department of Defense Labor Relations Policy was hurriedly prepared and copies are available for distribution with this presentation.

The pressures of time are such that it has been impossible to get to you in written form the comments and explanations which I would like to furnish you as to the concepts of organization and content of what we have called "Option 6." Additionally, the pressure of time have prevented our redrafting "Option 6" in legislative form for inclusion in the legislation you are considering. But we strongly urge that such consideration be given. The reasons for this are varied. The history which I have detailed for you shows that for seventeen years employees of the Canal Zone have been limited to "formal recognition" and "consultation". They have been denied the expanded rights of other Federal employees under Executive Order 11491, and it is proposed in the administration bill that they be given less than the rest of the Federal Service is given, even under the Civil Service Reform Act. The revised version of Option 6 was prepared in the light of the history of bargaining in the Canal Zone, and drew from the Executive Orders, the Civil Service Reform Law, and various state statutes dealing with collective bargaining for public employees, as well as the proposals from management.

The problems of the employees in Panama are unique and are not paralleled elsewhere in the Federal Service. The political climate in which they will work is full of uncertainty. The history which I have outlined demonstrates that the best interests of the United States and of the employees charged with the successful operation of the Canal will best be served by clarifying and setting out in legislation the rights of employees to exercise their collective bargaining rights with full-scale collective bargaining.

During the hearing on the administration bill there was some discussion of the possible application of Title VII of the Civil Service Reform Bill to employees under the jurisdiction of the Panama Canal Commission. There are several areas of Title VII which create particular hardships for labor organizations operating in this area of the Canal. Most of these problems are dealt with in the Revised Option 6, and I would like to cover some of them with you.

I did not learn I was to be here to day until late Thursday afternoon. Time and other commitments made it impossible for me to get that portion of this presentation typed and duplicated so, with your permission, I'll briefly supplement this written presentation with a short non-written outline of some of them.

REVISED JOINT PANAMA CANAL COMMISSION/DEPARTMENT OF DEFENSE LABOR RELATIONS POLICY

Whereas the public interest requires high standards of employee performance and the continual development and implementation of modern and progressive work practices to facilitate improved employee performance and efficiency; and,

Whereas the well being of employees and efficient administration of government operations are benefited by providing employees an opportunity to participate in the formulation and implementation of personnel policies and practices affecting the conditions of their employment; and,

Whereas, subject to applicable law and the paramount requirements of public service, effective labor-management relations requires a clear statement of the respective rights and obligations of employees, their labor organizations and their employer; and,

Whereas traditions of collective bargaining in the area and the provisions of applicable treaties, pacts, and status of force agreement make existing Executive Orders relating to collective bargaining inequitable and/or impracticable in the performance of work in the geographic area of Panama containing the Panama Canal so that special considerations to protect, preserve and conform to such traditions, treaties, pacts, and agreements are necessary and in the public interest as well as the interest of all concerned;

Now, therefore, by virtue of the authority vested in me by the President of the United States, I, the Secretary of the Army, hereby direct that the following policies shall govern officers of all Panama Canal Commission and DOD Agencies in all dealings with Panama Area federal employees and organizations representing such employees.

Section I. Definitions.

"Board"—Panama Area Labor Relations Board

"PCAA"—Panama Canal Area agencies which consist of what is presently called the Panama Canal Commission and Department of Defense (DOD) Agencies of the United States functioning in the Republic of Panama either collectively or any such commission or agency individually as applicable.

"Community of Interest"—Evidenced by (a) the similarity of relationship of skills; (b) distinctiveness of functions performed; (c) extent of integration of work processes; (d) commonality of working conditions; (e) place of places of work; (f) extent of employee interchange; (g) organizational structure; (h) governing personnel and administrative regulations; (i) locus of authority for personnel and labor relations program decisions; (j) common supervision; (k) pay systems; (l) tenure of employees; and, (m) hazards of employment; (n) physical qualifications; (o) educational qualifications; and (p) labor relations history.

"Conditions of Employment"—Includes, but is not limited to, such matters as working conditions and environment, wages, pay practices, work hours, and schedules overtime, work procedures, automation, safety, transfers, job classifications, details promotion procedures, seniority, assignments and reassignments, reduction in force, job security, contracting out use of military personnel, disciplinary actions and appeals, training, labor-management relationship, methods of adjusting grievances including final and binding arbitration, granting of leave, union security, travel and per diem, and such other matters as may be specified by agreement negotiated pursuant to this Agreement.

"Confidential Employee"—An employee who assists and acts in a confidential capacity to persons who formulate and effectuate management policies in the field of labor relations.

"Consult or Consultation"—The mutual obligation of PCAA and labor organizations representing employees of the PCAA to communicate orally or in writing for the purpose of presenting or obtaining views or advising of intended actions.

"Day"—A calendar day.

"Employee"—A civilian employee of an agency or non-appropriated fund instrumentality not including, for the purpose of exclusive recognition, a supervisor except in a unit as provided in Section 17 of this Policy.

"Employee Relations"—The relationship between the PCAA and its employees and their organization or, when used in the general sense, the relationship between management and employees or employee organizations.

"Employee Representation Unit"—A group of employees constituting an appropriate unit as provided in this policy.

"Exclusive Representative"—The labor organization which has been certified herein by the Panama Area Labor Relations Board as the majority representative of the employees in an appropriate unit.

"Fact Finding"—Identification of the major issues in a particular dispute, review of the positions of the parties, and the investigation and reporting of the fact by one or more impartial fact-finders and the making of recommendations for settlement.

"Grievance"—Means any complaint by an employee or by a labor organization concerning any aspect of the employment relationship with the PCAA including any matters which are subject to final administrative review outside of the PCAA, as well as any complaint by an employee, labor organization, or the PCAA concerning the effect, interpretation, violation, misinterpretation, or claim of breach of a collective bargaining agreement, and any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation governing conditions of employment.

"Labor Organization"—A lawful organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with agencies concerning grievances, personnel policies and practices, or other matters affecting the working conditions of their employees; but does not include an organization which

consists of management officials or supervisors, except as provided in Section 17 of this Policy.

"Management Official"—An employee having authority to make, or to influence effectively the making of, policy necessary to the agency or activity with respect to procedures of programs.

"Negotiations"—Performance by duly authorized representatives of management and duly authorized representatives of an exclusive representative of their mutual obligation to meet at reasonable times and to confer in good faith with respect to the terms and conditions of employment with a view towards reaching a collective bargaining agreement, including the continuing duty to so meet and confer and seek agreement as to the application of any such agreement to changed circumstances.

"Professional Employee"—

a. Any employee engaged in the performance of work (1) requiring knowledge of an advanced type in a field of science of learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, or physical processes; (2) requiring the consistent exercise of discretion and judgment in its performance; (3) which is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work); and (4) which is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; or

b. Any employee who has completed the courses of specialized intellectual instruction and study described in subparagraph a. of this paragraph, and is performing related work under the direction or guidance of a professional person to qualify the employee to become a professional employee as defined in subparagraph a. of this paragraph.

"Regulation"—Panama Canal Personnel Manual, C.F.R. 35 or Federal Personnel Manual, Department of Defense regulations or regulations of a DOD agency, in effect at the time of adoption of this policy, and amendments or new regulations adopted in accordance with the policy.

"Qualified Labor Organization"—Any organization which includes employees of the PCAA which has as one of its primary purposes representing such employees in their relations with the PCAA and which has complied with the conditions specified in section 4.

"Supervisory Employee"—Any employee having authority in the interest of the agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment, except that, with respect to any unit as provided in Section 17, or which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

Section 2. Employee rights

a. Each employee has the right, freely, and without fear of penalty or reprisal, to form, join, and assist a labor organization, or to refrain from any such activity, and each employee shall be protected in the exercise of this right. Except as otherwise expressly provided in this policy, the right to assist a labor organization extends to participation in the management of the organization and acting for the organization in the capacity of an organization representative, including presentation of its views to officials of the agencies, the Congress, or other appropriate authority. The head of each agency shall take the action required to assure that employees in the agency are apprised of their rights under this section, and that no interference, restraint, coercion, or discrimination is practiced within the agency to encourage or discourage membership.

b. Paragraph a of this section does not authorize participation in the management of a labor organization or acting as a representative of such an organization by a supervisor, except as provided in Section 17 of this policy, or by an employee when the participation or activity would result in a conflict or apparent conflict of interest or otherwise be incompatible with law or with the official duties of the employee.

Section 3. Employer rights

It is the right of the PCAA to determine the mission of each of its departments, to set standards of services to be offered, and to exercise control over its organization and operation. It is also the right of the PCAA to direct its employees to take

disciplinary action for proper cause; *provided, however*, that is the exercise of such rights causes a discontinuance or curtailment of jobs, it shall be the obligation of the PCAA to ensure that all employees affected thereby are protected against all loss resulting therefrom; and *provided*, that the exercise of such rights shall not preclude employees or their representatives from bargaining or raising grievances about the practical impact that decisions on the above matters have on terms and conditions of employment.

The PCAA shall not make or apply rules or regulations which are in conflict with any agreement negotiated under this Policy.

Section 4. Qualification of labor organizations

a. Each labor organization desiring qualification to represent PCAA employees shall file with the Board provided in Section 5, a statement containing the following:

- (1) the name and address of the organization
- (2) charter or constitution and by-laws
- (3) the names and titles of its officers
- (4) the names of any other persons authorized to represent the organization
- (5) a statement that membership in such organization is not denied because of race, creed, color, sex, age, national origin, political affiliation, marital status, or handicapping condition.

b. Any labor organization not subject to the regulation of the Labor Management Reporting and Disclosure Act of 1959 as amended (29 USC Section 401 et seq) shall certify to the Board in a form satisfactory to it the organization's procedures:

(1) for the maintenance of democratic procedures and practices, including provision for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the rights of individual numbers to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) for the exclusion from office in the organization of persons who would be prevented from holding office by the provisions of 29 USC Section 504 if the organization were subject to the regulation of such statute.

(3) for the prohibition of business of financial interests on the part of organization officers and agents which conflict with their duties to the organization and its members; and

(4) for the maintenance of fiscal integrity and the conduct of the affairs of the organization, including provisions for accounting and financial controls and regular financial reports or summaries to be made available to members.

c. The official designated by the Board shall register each labor organization which complies with the requirements of this section and shall maintain a list of such qualified organizations.

d. Qualified labor organizations shall promptly notify the Board of any changes in the information required in subsection a or b of this section which occur subsequent to the time of original filing. Complaints that a previously qualified organization no longer complies may be filed with the Board which shall investigate and determine whether or not the involved organization shall continue to be deemed qualified.

Section 5. Panama Canal Area Labor-Management Relations Board

a. There is hereby established the Panama Canal Area Labor-Management Relations Board which shall be autonomous and which shall consist of three members, whose terms shall be three years, to perform the functions hereinafter set forth. Each member shall hold office until his successor is appointed. If a vacancy occurs during a term, the appointee to said vacancy shall hold office for the remainder of the term and until his successor is appointed.

Within thirty days after this policy becomes effective, one member shall be appointed on the recommendation of the PCAA and one shall be appointed on the nomination of the labor organizations representing employees of the PCAA. The members thus selected shall together select within seven days an impartial third member who shall be appointed and designated as Chairman. In the event the two members cannot agree, a listing of five persons qualified and willing to serve shall be obtained from the American Arbitration Association and the Chairman shall be obtained from such lists. The Chairman initially appointed shall serve for a full three year term. One of the two initial members shall serve for a one year term and one shall serve for a two year term. These terms shall be determined by lot. Vacancies on the Board including those for new term shall be filled in the same manner as the original appointment.

b. Qualifications of Members: The members of the Board shall have experience in the field of employee relations and shall possess the impartiality necessary to protect the interests of the PCAA and its employees.

c. Members of the Board may be removed by the Secretary of the Army only upon notice and hearing, and only for nonfeasance, neglect of duty, or malfeasance in office.

d. All members shall be eligible for re-appointment for one additional term, but no person shall serve more than two terms.

e. Organization and meetings of the Board. The Board shall have the following duties and powers:

- (1) to determine and approve appropriate employee representation units,
- (2) to arrange for and supervise the determination of exclusive representatives for appropriate units by means of elections. The results of such elections shall be certified by the Board,
- (3) to decide matters involving certification or decertification of labor organizations,
- (4) to investigate, consider, and resolve charges of unfair labor practices and violations of standards of conduct and to take such action as the Board deems necessary to effectuate this Policy, including but not limited to, the issuance of orders to reinstate, make whole, or other affirmative action and/or to cease and desist,
- (5) to establish and maintain an adequate list of impartial mediators and fact-finders and to appoint same as provided for in Section 9 of this Policy,
- (6) to act upon requests for mediation, fact-finding, or arbitration of disputes as provided in Section 9 of this Policy,
- (7) to conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction,
- (8) to consider and decide issues relating to rights, privileges and duties of a labor organization in the event of a merger, amalgamation, or transfer of jurisdiction between two or more labor organization or agencies,
- (9) to delegate to one or more Board members, employees or agents the powers or duties it deems proper,
- (10) to make recommendations concerning any necessary or desirable revisions in this Policy to the Secretary of the Army,
- (11) to take such other actions as the Board deems necessary to effectuate this Policy.

f. The Board is authorized, following notice and hearing, to adopt reasonable rules and procedures not inconsistent with the provisions of this Policy or and other applicable statutory provisions and federal regulations and such other PCAA regulations as have not been superseded by the adoption of this Policy and which are necessary in the performance of its duties under this Policy. The Board shall appoint, from the Office of Personnel Management eligible lists, such supportive staff as it deems necessary.

g. To accomplish the objectives and carry out the duties herein provided, the Board may preserve and enforce order during any proceeding, administer oath or affirmations to, and compel the attendance and testimony of books, papers, records, documents and other evidence. Any notice of hearing, or other process or notice of the Board issued under the provisions of this Policy or rules or regulations adopted thereunder shall be served personally or by certified mail, a return made and verified by the individual making such service and setting forth the manner of such services is proof of service.

h. The Board is authorized, following notice and hearing, to adopt reasonable rules and procedures not inconsistent with the provisions of this Policy or any other applicable statutory provisions and federal regulations and such other PCAA regulations as have not been superseded by the adoption of this Policy and which are necessary in the performance of its duties under this Policy. The Board shall appoint, from the Civil Service eligible lists, such supportive staff as it deems necessary.

i. The PCAA shall provide appropriate office facilities, reference periodicals and books, equipment, and supplies for the Board and such staff as the Board may appoint. The PCAA also shall provide recording and transcription services for all public hearings conducted by the Board. Copies shall be made available to the parties at actual cost of reproduction.

j. The Chairman shall be paid an annual salary of \$———, which shall be paid in equal bi-weekly installments. The PCAA and labor organization nominated members of the Board shall receive an honorarium of \$250.00 for each day engaged in the work of the Board. All members of the Board shall be reimbursed for

expenses including those reasonable incurred in traveling to and from and attending meetings and functions of the Board.

k. The Board shall make such expenditures including expenditures for personal services, rental, law books, books of reference, periodicals, furniture, equipment, and supplies as may be necessary in exercising its authority and powers in carrying out its duties and responsibilities. All such expenditures of the Board shall be allowed and paid by PCAA upon the presentation of itemized vouchers therefore approved by the Chairman.

l. The Board shall maintain and keep open during reasonable business hours an office for the transaction of its business at which its official records and papers shall be kept. The Board may hold sessions and conduct hearings at any place within the area.

m. The Board shall have a seal for authentication of its orders and proceedings and it shall be judicially noted.

n. Any hearing held or oral argument heard by the Board shall be open to the public, but the deliberations of the Board in any proceeding before it shall be closed. All draft orders developed in preparation for or preliminary to the issuance of a final written order shall be exempt from public disclosure under the freedom of information act.

Section 6. Certification of labor organizations

a. The determination of an appropriate unit will be made by the Board on a case to case basis. The Board shall apply the following factors in determining the appropriateness of representational units:

- (1) The community of interest of employees.
- (2) The lawful unit grouping that the employees and the employer have followed in past bargaining over a substantial period.
- (3) The desires of the employees.
- (4) The history of employee representation in the unit among other employees of the PCAA and in similar employment.
- (5) The operational requirements of the PCAA.

b. A unit shall not be established solely on the basis of the extent to which employees in the proposed unit have organized, nor shall a unit be established if it includes—

(1) any management official or supervisor except as provided in Section 17 of this Policy;

(2) an employee engaged in personnel work in other than a purely clerical capacity;

(3) both professional and nonprofessional employees, unless a majority of the professional employees vote for inclusion in the unit;

(4) an employee engaged in administering the provisions of this Policy;

(5) a confidential employee;

(6) any employee primarily engaged in investigative or audit functions relating to the work of individuals employed by an agency whose duties directly affect the internal security of the agency, but only if the functions are undertaken to ensure that the duties are discharged honestly and with integrity.

c. All elections shall be conducted under the supervision of the Board, or persons designated by it, and shall be by secret ballot. Each employer eligible to vote shall be provided the opportunity to choose the labor organization he or she wishes to represent him or her, from among those on the ballot, or "no union".

(1) a labor organization should be recognized as the exclusive representative of employees in a unit;

(2) a labor organization should replace another labor organization as the exclusive representative;

(3) a labor organization should cease to be the exclusive representative.

d. Petitions and Elections. A petition may be filed:

(1) by a qualified labor organization that can demonstrate that thirty percent (30 percent) of the employees in an appropriate unit has signed authorization cards, or are dues paying members of that labor organization; or

(2) by an agency certifying that one or more qualified labor organizations meeting the requirements of (1) above, has presented to it a claim to be recognized as the exclusive representative in an appropriate unit; or

(3) by thirty percent (30 percent) of the employees in an exclusive unit alleging the exclusive representative is no longer the representative of the majority of employees in their unit.

When a petition has been filed as set forth above, all qualified labor organizations known to have members or known to be seeking recognition in the unit shall be notified by the Board, in writing, of the proposal, the description of the unit, the

name of each labor organizations having or seeking exclusive recognition, and advised that they have ten calendar days after the date of the notice in which to register with the Board any views as to the proposed unit. Each such organization shall be further advised that, if it wishes to represent the employees in the same unit, it must demonstrate that it has the support of at least ten percent (10 percent) of the total number of employees evidenced by signed authorization cards, or as dues paying members in said unit, or thirty percent (30 percent) of the total number of employees has signed authorized cards, or are dues paying members in any smaller unit included in said unit. On the same date of the notices required by the paragraph above, notice of the petition shall be posted on appropriate bulletin boards, in the unit, together with a statement of the time limit (ten calendar days after the date of posting) within which views or other specific unit proposals by labor organizations must be submitted to the head of the Board.

The Board shall conduct such inquiries and investigations or hold such hearings as it shall deem necessary in order to decide the question raised by the petition or petitions. The Board's determination may be based upon the evidence adduced in such inquiries, investigations, or hearings as it is or its agents shall make or hold, or upon the results of a secret ballot election as it shall direct and conduct.

e. *List of Names.*—Upon the direction of an election by the Board, the agency shall furnish each labor organization approved for inclusion on the ballot, a list of the names and departments of employees in the representation unit. The list shall be furnished a reasonable time in advance of the election and in no event later than seven days after the direction of an election.

f. *Elections.*—In any election for exclusive recognition the labor organization receiving a majority of the valid votes cast shall be certified as the exclusive representative of all employees in the voting unit. Where no choice on the ballot including that of "no union" receives a majority, there shall be a run-off between the two high choices. The Board shall certify the results of the election.

g. *Duration of Certification.*—When a labor organization has been certified as the majority representative of an appropriate unit, certification shall remain in effect for one year from the date thereof, and thereafter until the organization is decertified pursuant to subsection d(3) of this section.

h. *Effect of Certification.*—When a labor organization has been certified as the exclusive representative of employees in an appropriate unit, it shall be entitled to represent and bargain collectively for all employees in the unit and it shall be responsible for representing the interests of all such employees without discrimination and without regard to labor organization membership. Such labor organization shall have the right to participate in the formulation, implementation, and modification of personnel policies and practices and all other matters affecting the conditions of employment of employees in the unit. The agency and such labor organization, through appropriate officials and representatives, shall meet at reasonable times and places for purposes of negotiating a written collective-bargaining agreement. The agency and the labor organization shall negotiate in good faith for the purpose of arriving at a collective-bargaining agreement.

i. After having determined that a unit is appropriate, the Board may certify the labor organization as the exclusive representative without a secret ballot election if the labor organization can satisfy the Board that a majority of the eligible bargaining unit employees are currently members of the labor organization.

Section 7. Duty to bargain

The duties of the PCAA and a certified employee organization to negotiate in good faith shall include the mutual obligation:

(1) To approach the negotiations with a sincere resolve to reach an agreement; (2) to be represented at the negotiations by duly authorized representatives prepared to discuss and negotiate on all matters within the scope of collective bargaining;

(3) to meet at reasonable times and convenient places as frequently as may be necessary, and to avoid unnecessary delays;

(4) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and negotiation of subjects within the scope of collective bargaining; and

(5) to negotiate a grievance procedure to be used for the settlement of disputes between employer and employee and groups of employees involving the interpretation or application of a collective bargaining agreement which shall have as its terminal step a final and binding disposition by an impartial neutral mutually selected by the parties.

(6) If an agreement is reached to execute, upon request, a written document embodying the agreed terms and to take such steps as necessary to implement the agreement; provided, however, recognition of any labor organization in whatever form accorded and any grievance procedure provided pursuant to (5) above shall not preclude any employee regardless of his membership or non-membership in any labor organization from bringing grievances to the attention of appropriate agency officials on condition that the adjustment of such grievances is not inconsistent with a collective bargaining agreement then in effect and that the bargaining representative shall be given the opportunity to be present and to present its views and provided, further, employees may be required to elect between contractual grievance procedure and Civil Service or other Agency procedures.

(7) Upon request of either party, the formulation of preliminary ground rules and any such understandings reached by the parties may be incorporated in a separate written agreement; and

(8) to furnish to the other party, upon request, data normally maintained in the regular course of business, reasonably available and necessary for full and proper discussion, understanding and adjustments of complaints and grievances in the administration or application of a collective bargaining agreement; provided, however, this shall not require disclosure of material prohibited from disclosure by "right to privacy" laws of the United States, and the PCAA by regulation may provide procedures for the acceptance of waivers or limited waivers from employees authorizing furnishing of any such information.

Section 8. Negotiations and consultations

a. Negotiations:

(1) The scope of good faith negotiations between management representatives and representatives of labor organizations included the execution of the budget; formulation and application of personnel regulations and initiation of revision of existing personnel regulations and conditions of employment.

(2) Negotiation shall not be required on any matter preempted or specifically provided for by federal law nor shall negotiation be required on the exercise of Employee Rights as defined in Section 2 of this Policy.

(3) Requests for negotiations by exclusive representatives on matters requiring major budgetary financing shall be submitted to the management representative in time for adequate discussion, consideration and action in connection with the budget.

(4) The PCAA will make available to labor organizations such information pertaining to employment relations as is contained in the public records of the PCAA subject to the limitations and conditions set forth elsewhere in applicable law of the United States.

(A) Such information shall be made available during regular working hours in accordance with the PCAA rules and procedures.

(B) Information which shall be made available to labor organizations includes regularly published data covering subjects under discussion.

b. Consultation:

(1) The scope of consultation between management representatives and representatives of affected exclusive representatives includes employee relations matters that are specifically excluded from negotiations.

(2) Every reasonable effort shall be made to have consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

(3) Requests for consultation shall be directed to the management representative of the PCAA having jurisdiction over the matter to be discussed.

c. Advance Notice of Proposed Change in Regulation:

The PCAA shall give reasonable advance written notice to each qualified labor organization affected, of any rule regulation within its jurisdiction directly relating to matters within the scope of representation proposed to be accepted, amended or repealed and shall give such employee organization the opportunity to meet with the PCAA or his representative to discuss such rule or regulation.

Section 9. Impasse procedure

a. At least thirty (30) days prior to the expiration date of any collective bargaining agreement, or thirty (30) days after commencement of negotiation of an initial agreement, the parties shall notify the Board of the status of negotiations. The Board shall assign a mediator upon request of either party or upon its own motion.

b. If upon expiration of an existing negotiated agreement, or thirty (30) days following certification or recognition of an exclusive representative, an impasse exists between the employer and the exclusive representative, the parties may jointly petition the Board to initiate fact-finding; however, the parties must have made a

significant effort to resolve the differences themselves. The Board has the authority to return the issue to the parties.

(1) Within three (3) days of receipt of such petition or the Board's independent initiation, the Board shall submit to the parties a list of seven qualified, disinterested persons obtained from the Federal Mediation and Conciliation Service, from which list each party shall alternate in striking three (3) names, and the remaining person shall be designated "fact finder." This process shall be completed within five (5) days of receipt of the list. The parties shall notify the Board of the designated fact finder.

c. The fact finder shall immediately establish dates and places of hearings. The fact finder may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the issue in dispute. Upon completion of the hearings, but no later than twenty (20) days from the appointment, the fact finder shall make written findings of facts and recommendations for resolution of the dispute and shall serve such findings on the PCAA, the exclusive representative, and the Board. The Board may make this report public if the dispute is not resolved five (5) working days after the report is submitted to the parties. If the dispute is not resolved within ten (10) working days after the report is submitted to the parties, the Board shall take whatever action it considers necessary to resolve the impasse, including hearings before the Board or adoption to the fact finder's report. Such action by the Board shall be binding on the parties.

d. The concerned agency and the exclusive representative shall be the only parties to fact-finding proceedings.

e. The cost of mediation and fact-finding proceedings shall be borne by the Board.

f. Nothing in this section shall be construed to prohibit the fact finder from endeavoring to mediate the dispute.

g. Nothing in this section shall be construed to prohibit the parties from voluntarily agreeing to submit any or all of the issues in dispute to final and binding arbitration, and if such agreement is reached, said arbitration shall supersede the fact-finding procedures set forth in this section. An agreement to arbitrate, and the award issued in accordance with such agreement shall be enforceable in the same manner as is a contract. The cost of such interest arbitration shall be shared by the parties.

h. Except upon written agreement to the contrary, when the parties reach an impasse, one party may not change a personnel policy, practice, or working condition without first providing the other party with sufficient notice of its intent so that the other party may invoke these impasse procedures. If these procedures are not invoked, however, the parties must adhere to established policies, practices and working conditions to the maximum extent possible. In the absence of an overriding exigency, the status quo will be maintained until such time as the impasse procedures are completed.

Section 10. Grievance and arbitration procedures

a. An agreement between an agency and a labor organization shall provide a procedure, applicable only to the unit, for the consideration of grievances, and culminating in final and binding arbitration, except as provided elsewhere in this Policy, or in paragraph b, below. The coverage and scope of the procedure shall be negotiated by the parties to the agreement, except matters for which there is a statutory appeal procedure which by statute is exclusive and so long as it does not otherwise conflict with statute or this Policy. Subject to such limitation all grievances of an employee or the labor organization on the one hand, or the PCAA on the other, must be submitted through such procedure. However, any employee or group of employees in the unit may present such grievance to the agency and have them adjusted without the intervention of the exclusive representative, as long as the adjustment of such grievances is not inconsistent with the terms of the agreement and the exclusive representative has been given opportunity to be present at the adjustment.

b. Equal Employment Opportunity complaints and appeals of adverse actions shall be covered by the negotiated grievance and arbitration procedure. The employee, however, shall retain the option of having such a complaint or appeal processed under the negotiated procedure or the statutory procedure. This election must be made prior to submission to arbitration.

c. A negotiated procedure shall provide for arbitration of grievances. Arbitration may be invoked only by the agency or the exclusive representative.

d. Questions as to whether or not a grievance is on a matter subject to the grievance procedure in an existing agreement, or is subject to arbitration under that agreement, may be submitted to arbitration as a threshold question.

Section 11. Approval of agreements

An agreement with a labor organization as the exclusive representative of employees in a unit is subject to the approval of the head of the agency or an official designated by him. An agreement shall be approved within thirty (30) days from the date of its execution if it conforms to applicable laws, the Policy, existing published agency policies and regulations (unless the agency has granted an exception to a policy or regulation) and regulations of other appropriate authorities. An agreement which has not been approved or disapproved within thirty (30) days from the date of its execution shall go into effect without the required approval of the agency head and shall be binding on the parties subject to the provisions of law, the Policy, and the regulations of appropriate authorities outside the agency.

Section 12. Standards of conduct for labor organizations

a. An agency shall accord recognition only to a labor organization that is free from corrupt influences and influences opposed to basic democratic principles. Except as provided in paragraph b of this section, an organization is not required to prove that it has the required freedom when it is subject to governing requirements adopted by the organization or by a national or international labor organization, or federation of labor organizations with which it is affiliated or in which it participates, containing explicit and detailed provisions to which it subscribes calling for—

(1) the maintenance of democratic procedures and practices, including provisions for periodic elections to be conducted subject to recognized safeguards and provisions defining and securing the right of individual members to participation in the affairs of the organization, to fair and equal treatment under the governing rules of the organization, and to fair process in disciplinary proceedings;

(2) the exclusion from office in the organization of persons affiliated with any organization which advocates the overthrow of the constitutional form of government in the United States, and persons identified with corrupt influences;

(3) the prohibition of business or financial interests on the part of organization officers and agents which conflict with their duty to the organization and its members; and

(4) the maintenance of fiscal integrity in the conduct of the affairs of the organization, including provision for accounting and financial controls and regular financial reports or summaries to be made available to members.

b. Notwithstanding the fact that a labor organization has adopted or subscribed to standards of conduct as provided in paragraph a of this section, the organization is required to furnish evidence of its freedom from corrupt influences or influences opposed to basic democratic principles when there is reasonable cause to believe that—

(1) the organization has been suspended or expelled from or is subject to other sanction by a parent labor organization or federation of organizations with which it had been affiliated because it has demonstrated an unwillingness or inability to comply with governing requirements comparable in purpose to those required by paragraph a of this section; or

(2) the organization is in fact subject to influences that would preclude recognition under this policy. 30c. A labor organization which has or seeks recognition as a representative of employees under this Policy shall file financial and other reports, provide for bonding of officials and employees of the organization, and comply with trusteeship and election standards.

d. The Board shall prescribe the regulations needed to effectuate this section. These regulations shall conform generally to the principles applied to unions in the Federal sector. Complaints of violations of this section shall be filed with the Board.

Section 13. Use of official time

a. Employees called upon by either party to participate in any phase of proceedings under this Policy, including elections, investigations, hearing, arbitrations, negotiations (including ground rules), and grievance and impasse procedures shall be free to do so on official time without suffering any loss of pay or benefits and all such employees shall be free from restraint, coercion, interference, intimidation, or reprisal as a consequence of their participation.

b. Qualified labor organizations may hold, at least semi-annually, one meeting on official time.

Section 14. Dues deduction

a. The PCAA shall, on receipt of the written authorization of an employee deduct from the pay of said employee at no cost to the labor organization or employee any dues or fees designated or certified by the appropriate officer of a labor organization, and shall remit said monies as directed by said labor organization together

with a complete listing of employees in the unit showing that amount deducted from and remitted for each; *provided*, that if an exclusive representative has been designated, the PCAA may not entertain an authorization on behalf of any other labor organization from an employee in said bargaining unit; *provided further*, that any such assignment shall be irrevocable for a period of at least one year or the termination date of the applicable collective agreement, whichever occurs sooner.

b. Nothing in this Policy shall preclude a labor organization that is the exclusive bargaining representative and which does not have a Union shop agreement from entering into an agreement with the PCAA whereby employees who are not members of a labor organization shall be required to contribute to the cost of the representing of all employees in the unit by paying such organization equal to eighty percent (80%) of the dues fees and assessments that a member of such organization is required to pay.

Section 15. Use of facilities

Where exclusive recognition has not been granted, activity facilities shall be made available for the use of labor organizations where practicable, upon request, on an impartial and equitable basis, for the posting of notices, membership meetings outside regular working hours, and the like. Where a labor organization holds exclusive recognition, the control of that use of facilities shall be limited to that organization.

Section 16. Unfair labor practices

a. Agency management shall not—

(1) interfere with, restrain, or coerce an employee in the exercise of the rights assured by this Policy;

(2) encourage or discourage membership in a labor organization by prohibited discrimination in regard to hiring, tenure, promotion, or other conditions of employment;

(3) sponsor, control, or otherwise assist a labor organization, except that an agency may furnish customary and routine services and facilities under Section 15 of this Policy when consistent with the best interests of the agency, its employees, and the organization, and when the services and facilities are furnished, if requested, on an impartial basis to organizations having equivalent status;

(4) discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under this Policy;

(5) refuse to consult or negotiate in good faith with a labor organization as required by this Policy;

(6) fail or refuse to cooperate in impasse procedures and impasse decisions as required by this Policy;

(7) enforce any rule or regulation which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or,

(8) otherwise fail or refuse to comply with any provision of this Policy.

b. A labor organization shall not—

(1) restrain, or coerce any employee in the exercise by the employee of any right under this Policy;

(2) cause or attempt to cause an agency to discriminate against any employee in the exercise by the employee of any right under this Policy;

(3) discriminate against an employee with regards to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, political affiliation, marital status, or handicapping condition;

(4) refuse to consult or negotiate in good faith with an agency as required by this Policy;

(5) fail or refuse to cooperate in impasse procedures and impasse decisions as required by this Policy;

(6) otherwise fail or refuse to comply with any provision of this Policy.

c. For the purpose of this Policy it shall be an unfair labor practice for an exclusive representative to deny membership to any employee in the appropriate unit represented by such exclusive representative for any reason prohibited by this Policy, except for—

(1) to meet reasonable occupational standards uniformly required for admission; or

(2) to meet the non-discriminatory requirements of the organization's constitution, as a condition of obtaining membership in the organization, or

(3) to tender dues or other payments required as a condition of acquiring and retaining membership or by the collective agreement.

This subsection does not preclude any labor organization from enforcing discipline in accordance with procedures under its constitution or by-laws to the extent consistent with the provisions of this Policy.

d. The expression of any personal view, argument, opinion, or the making of any statement which—

(1) publicizes the fact of a representational election and encourages employees to exercise their right to vote in such election;

(2) corrects the record with respect to any false or misleading statement made by any person; or

(3) informs employees of the Government's policy relating to labor-management relations and representation, shall not if the expression contains no threat of reprisal or force or promise of benefit or was not made under coercive conditions, (a) constitute an unfair labor practice under any provision of this Policy; or, (b) constitute grounds for the setting aside of any election conducted under any provisions of this Policy.

e. Charges of unfair labor practices under this section may be made by an employee representative, an individual employee or a group of employees, or by a management representative. Such claims shall be processed by the Board in accordance with its rules.

f. If, upon a preliminary investigation, it is determined by the Board or its agent that there is not substantial evidence indicating a prima facie violation of the applicable unfair labor practice provision, the designated agent or the Board shall dismiss the charge, subject to the right of the charging party to appeal to the Board.

g. If the Board or its agent determines there is substantial evidence indicating a prima facie violation, the Board or such agent shall issue and cause to be served upon the person charged with the violation a complaint and notice of hearing before the Board or a member thereof, or before a designated agent at a place therein fixed to be held not less than fourteen (14) days after service of a copy of the complaint by the Board. Any charge may be amended by the charging party at any time prior to the issuance of a complaint based thereon provided the charged party is not unfairly prejudiced thereby. The person upon whom the complaint is served shall file an answer to the complaint, the charging party and the respondent shall have the right to appear in person or otherwise and give testimony at the time and place fixed in the notice of hearing in the discretion of the member or conducting the hearing, or the Board, any other person may be allowed to intervene in the proceeding and to present testimony at any hearing. The Board shall not be bound by the judicial rules of evidence.

h. The testimony taken by the Board or its member or agent shall be reduced to writing and filed with the Board. Thereafter, the Board, upon notice, may take further testimony or hear argument.

i. No complaint shall be issued based upon any unfair labor practice occurring more than six (6) months prior to the filing of the charge with the Board unless the person aggrieved thereby was prevented from filing the charge by reason of service in the Armed Forces in which event the six (6) month period shall be computed from the day of his discharge.

j. If the Board's decision is that the PCAA has engaged in an unfair labor practice or has otherwise violated this Policy or any rule or implementing regulation issued thereunder, the Board shall direct the PCAA to take appropriate corrective action. If compliance with the Board's decision is not obtained within the time specified by the Board, it shall so notify the other party, which may then resort to its legal remedies.

k. If the decision is that a labor organization or its representatives have engaged in an unfair labor practice, or have otherwise violated this Policy or any rule or implementing regulation issued hereunder, the Board shall direct the offending party to take appropriate corrective action. If compliance with the Board's decision is not obtained within the time specified by the Board, it shall so notify the parties and shall take appropriate action to enforce its decision.

Section 17. Savings clause

a. This Policy does not preclude the according of recognition for units containing management officials or supervisors represented by labor organizations which historically or traditionally represent management officials or supervisors in private industry, or elsewhere in the Federal or public sector, and which hold recognition for units of such officials or supervisors in an agency on the date of this Policy.

b. Allotments for the withholding of dues to labor organizations which were in effect prior to the date of this Policy will continue in effect until—

(1) revoked by the employee;

(2) terminated for other reasons (e.g., death, retirement, separation, transfer between agencies, change of pay-roll office);

(3) the employee becomes a member of an exclusive unit represented by a different labor organization; and

(4) the employee is suspended or expelled from the labor organization.

Section 18. Applicability

a. This Policy applies to all employees of the Panama Canal Commission and employees of DOD activities in the Republic of Panama regardless of nationality, except as provided below—

(1) any office, bureau, or entity within an agency, which has as a primary function intelligence, investigative, or security work, when the head of the agency shall so certify to the Board and the Board after investigation and pursuant to standards adopted under the provisions of the Administrative Procedures Act, determines that the Policy cannot be applied in a manner consistent with national security requirements and considerations;

(2) any office, bureau, or entity within an agency which has as a primary function investigative or audit of the conduct or work of officials or employees of the agency for the purpose of ensuring honesty and integrity in the discharge of their official duties, when the head of the agency shall certify to the Board and the Board after investigation and applying standards adopted pursuant to the procedures of the Administrative Procedures Act, determines that the Policy cannot be applied in a manner consistent with the internal security of the agency.

b. Employees engaged in administering this Policy shall not be represented by a labor organization which also represents other groups of employees under this Policy, or which is affiliated directly or indirectly with an organization which represents such a group of employees.

Section 19. Construction of policy

Nothing in this Policy shall be construed to deny any person or employee rights granted by law or to conflict with provisions of any law applicable to the PCAA and its employees.

Section 20. Separability

If any provision of this Policy, or the application of such provision to any person or circumstance, is for any reason held to be invalid by the decision of any court having plenary jurisdiction over the PCAA and its employees, such decision shall not affect the validity of the remainder of this Policy or the application of such provision to persons or circumstances other than those as to which it is held invalid.

Section 21. Effective date

a. This Policy shall become effective upon adoption by the Secretary of the Army.

b. Revisions of this Policy shall be made and become effective only after compliance with the rulemaking requirements of the Administrative Procedures Act of the United States have been met and time for appeal therefrom has expired without an appeal or after final ruling on an appeal whichever is later.

Mr. WYATT. Excuse me, Mr. Chairman. I didn't get the name of the person presenting the written testimony.

Mr. HAMILTON. My name is Frank E. Hamilton, Jr.

Mr. WYATT. Who did you say you are representing?

Mr. HAMILTON. The International Organization of Masters, Mates, and Pilots.

For the last several months I have been working with a group of the labor organizations from the Canal Zone in an attempt to come up with a unified labor policy. There are two or three points I would like to stress.

Both the administration bill, which was the subject of hearings last week, and H.R. 111, provided that the provisions of the civil service formula will not apply to the Canal Zone employees.

I think if you look at the history which I have attempted to briefly trace for you, you will see the problems which we have been confronted with and which we have had in attempting to work out a policy which can be uniformly applied.

We strongly urge that Congress, instead of leaving it to administrators, include in the implementing legislation the legal framework under which collective bargaining in this area is to be carried out.

Now, in doing so we also want to stress that it should be uniform for all persons who are employees of the Commission, who are within its jurisdiction, because 30 years of experience in the field of labor law has demonstrated to me that when you have two groups of employees who are working together, doing the same job side by side under common supervision and who are treated differently, you get chaos.

With that as an introduction, I would like to point out to you a couple of the things we find with reference to the existing title VII, some of the problems which it has for the Canal Zone, and which we urge be corrected here. It can be corrected in statutory form rather than as a matter of policy.

There is enough uncertainty for the people here that there should not be left to policy which may be changed by the administration as it progresses through this transitory period. The protections should be spelled out in statute so as to be firm.

Now, going to the problem areas with the civil service reform law, which is basically good, in what we have called option 6 and which is the 23-page document which you have, I ask you to compare the definition of an employee there with the definitions which are in the civil service reform law.

The definition excludes aliens; that is, those who are not citizens of the United States; this also is section 127 of H.R. 111.

This is a recreation of the gold and silver standard which President Wall referred to, and it's the opportunity for the chaos that I have described.

Second of all, it excludes from the definition of employees those who are supervisors. Now, granted that is the language in the National Labor Relations Act, it is not generally followed in the public employee field. Now, there is in the civil service law a provision wherein units of supervisors may be included, but you have to bear in mind that is conditioned upon their having been or having had exclusive recognition.

The history which you have before you shows that no labor organizations in the Canal Zone have enjoyed exclusive recognition; all they have had is formal recognition and consultation rights. So the statute as presently written would not permit the recognition of supervisory unions such as the Masters, Mates and Pilots which has been uniformly recognized.

A second area that I would like to point out to you are the problems of the Federal Labor Relations Authority. Now, under the civil service law this is very good but for the Commission you have a very unique situation. Here you have a Commission which will consist for 10 years of three Americans and two Panamanians, and then it will shift to three Panamanians and two Americans, at least that is my understanding of the treaty.

So we then have a situation where we need to have a committee or authority specifically for the Canal Zone.

A third area that I think you should consider is the elements of the duty to bargain and the scope of bargaining. Here again the

very uniqueness of the situation here in the canal area is such as to in many and major ways differentiate from the remainder of the Federal service and, therefore, some of the provisions there need to be clarified and spelled out a little further.

We have attempted to do some of this in connection with what we call option 6.

Finally, and as a response perhaps to the closing comment by Captain Faulkner, we would suggest and urge that the legislation clarify and provide broader latitude for bargaining concerning pension rights.

Most of the labor organizations have pension funds or industry funds, industrywide pension funds, and we would like to be able to permit the employees to participate in those funds either while they are employees of the Commission or if they leave the area to be able to roll it over into the industry funds.

Now these are the areas which we strongly urge to you. I apologize that I have not had time to prepare these things for you in a detailed written form, nor to redo option 6 as proposed provisions or sections of the implementing legislation. But I cannot more sincerely urge you to please provide by statute the framework within which the employees of the canal may be protected in collective bargaining.

Mr. MURPHY. Shannon, does that complete the panel?

Mr. WALL. Yes, sir.

Mr. MURPHY. We will consider in our markup session the question of Board membership as far as the U.S. representatives are concerned.

In other legislation the Congress has indicated that some labor, some management, and other types of professional people should be on the Board, and does place certain guidelines for the effective—and we do know the effective resists that type of suggestion legislatively—but it will be considered by the committee, so you can rest assured that a labor representative proposal will be made in the markup session.

Mr. WALL. Thank you.

Mr. MURPHY. Captain Werner, we have six outstanding State maritime academies in the United States, that are tuition academies. Panama could send to those schools and could have over the years Panamanian nationals.

I know at Fort Schuyler in New York and at Castine, Maine, Iran sent as many as 50 to 70 students at a given time, and not only placed them in the merchant marine but also commissioned them in their navy, and used those areas for training their people.

As far as the U.S. Merchant Marine Academy is concerned, Panama could have applied over the years for Panamanian nationals to attend that Academy on a reimbursible basis, as other Latin countries have done. But to my knowledge it has not been taken advantage of by the Republic of Panama, except in very minor instances.

Can you tell us how many pilots of Panamanian nationality are operating in the canal today?

Captain Werner. We have two Panamanian citizen pilots on our pilot force.

Mr. CARNEY. What is the total pilot force?

Captain WERNER. As of February 10 the strength of the pilot force was 225 pilots.

Mr. CARNEY. Thank you.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. Thank you, Mr. Chairman.

You have given us much to consider in your testimony.

One thing I expected to hear and didn't hear is your relationship with the Panamanian work force in terms of their union representation. I don't know if you want to talk about that, but I think that is obviously an important part of the consideration.

Everyone has to consider in terms of not only the implementing legislation but how the transition period works.

Mr. Wall, if you would like to address that, I am sure the committee would like to hear what the relationship is in your dealings with the labor movements.

Mr. WALL. I believe about 90-some percent of our membership here in the Canal Zone are Panamanian or non-U.S. citizen.

Mr. SHEPPARD. For the teacher force, the educational workers, about 8 percent of them are Panamanian.

Mr. GRAHAM. The Metal Trades Department of the Canal Zone, Central Labor Union has an increasing number of Panamanian members as a result of the Panama Canal Company apprenticeship program, in which we included 25 Panamanians per year starting in 1958. Gradually, as time goes by, more and more of our members are Panama nationals.

Captain FAULKNER. The pilots have approximately 25 percent and marine traffic controllers apprentices, whom we also represent, are predominantly Panamanian, about 90 percent.

Mr. HAMILTON. I think you will note on page 5 of the option 6 that we have as one of the qualifications of or proposed or suggested qualifications of labor organizations to be recognized and be an exclusive representative would be that it's certified that membership in the organization is not denied because of race, creed, color, sex, age, national origin, political affiliation, marital status or handicapped condition.

Mr. BONIOR. Mr. Wall, in your statement you alluded to the question of the composition of the Commission and maritime and labor representation on that Commission. Of course, the administration in its bill has argued that—and I believe this is correct and if it is not I stand corrected—given the nature of the transition period, it would be more beneficial to have someone responsible directly to the U.S. Government rather than to have those in the private sector on the Commission.

Would you feel comfortable, for instance, with Ray Marshall being the representative on the Commission? You would probably be more comfortable with yourself.

Mr. WALL. I certainly would not be uncomfortable if Ray Marshall was a member of the Commission. I don't think that goes to the point that we were trying to make, that this is primarily a maritime enterprise and we have heard a good deal of discussion and testimony that all the problems of the Canal Zone Government or area can be cured simply by raising the tolls.

We have made it clear to the present Canal Zone Government, we have made it clear to the Government of Panama that there

always comes a point of diminishing returns. Perhaps without the added business of Alaska, the carriage of Alaska oil, the Canal Company would have been in much more serious financial straits than it is now.

Mr. BONIOR. Let me interrupt at this point and ask you if you are saying what I think you are saying, that you would be opposed to the tolls covering the interest payments to the United States or for amortization that is contained in the chairman's bill?

Mr. WALL. We realize that those have to be taken care of in some place. But they have not been taken care of in the past, and they are now piling up and the burden we feel is going to be directed solely to the maritime industry.

Mr. BONIOR. How would you propose that those issues be taken care of if they are not taken care of through the tolls?

Mr. WALL. I think it's a responsibility of the entire populus of the United States to take care of some part of these costs. The testimony made it very clear, anybody using the canal should be obligated to pay for all of the costs of the canal, but not all of the costs that it has in the past borne.

Mr. MURPHY. Would the gentleman yield at this point?

Mr. BONIOR. I yield to the chairman.

Mr. MURPHY. In H.R. 111, with the exception of the Secretary of Defense, we say that no public members would be on the Board and the Secretary of Labor would probably not be, and the reason was that a study of Board members over the years found that members from the private sector were far more attentive to the duties as Board members than members in the public sector and that experience factor prompted us to require that exclusion.

Mr. BONIOR. I can well understand that and can appreciate that point. I see the merit in that particular reasoning. Of course, the other side of the question is the responsibility for the members, whether you have private members going off on a tangent and not accounting to the President. I would say the President or whoever is going to make the appointment under the process and would have the powers, but I think in terms of the transition period it's awfully important to do it in the smoothest fashion possible.

Let me just move on to a couple of other questions, and I know my colleagues are waiting with questions that they have.

Let me ask Mr. Sheppard concerning the teachers; how many members of the AFT are employed at the college?

Mr. SHEPPARD. We have a total at the college of approximately 19 to 20 members of AFT.

Mr. BONIOR. Instructors. Any administrators?

Mr. SHEPPARD. Yes; they are all instructors; we don't represent above the level of vice principal in our organization.

Mr. BONIOR. There seems to be some uniformity amongst the community in terms of keeping the college. I think we have heard that from just about everybody and I think that is one which Congress will consider seriously.

The sabbatical thing you talk about, how many teachers do you have generally; you mentioned earlier 8 percent were Panamanians, but how many teachers do you have?

Mr. SHEPPARD. Approximately, the teaching force including schools and so forth is 625 to 650 in the canal.

Mr. BONIOR. Is there a similar sabbatical in some of our other installations overseas, DOD installations?

Mr. SHEPPARD. The Department of Defense does not have any. We do beg to differ with the fact the Department of Defense should impose their standards on the present teachers here. The teachers here came for a career. One of the employee inducements to come here was the fact they did have a sabbatical program.

The sabbatical program is a very valuable program to education. We think that this will have a great effect on the quality of our educational system here in the Canal Zone, which has been rated by very many people as much higher than the remainder of the Department of Defense.

Mr. BONIOR. Did you testify before the Post Office and Civil Service Committee?

Mr. SHEPPARD. Yes, I did.

Mr. BONIOR. What was the reaction to your buy into the pension system?

Mr. SHEPPARD. On the buy into the pension system, the committee was rather noncommittal or on our portion of the buy-in into the pension program. We have been attempting to get this legislation for the past approximately 13 years. However, it has been shunted aside because of the different treaties that have come up and the treaty negotiations always want to see it aside until the implementing legislation is passed.

Mr. BONIOR. Mr. Hamilton, were you here before the Post Office and Civil Service Committee?

Mr. HAMILTON. Yes, sir.

Mr. BONIOR. What was their reaction to your suggestion on the definition of "employees"?

Mr. HAMILTON. I believe they were quite favorable to the possible consideration of removing the alien resident provision. We did not go into detail on the supervisory question before them at that time. It was my understanding they had a number of questions and in the interest of time they would be submitted in writing, and I still have not received them and I certainly would urge the same point to them as well.

You see, this is not just an I.O.M.M. & P. problem. For example, the teachers unit with vice principals certainly includes those who meet the Taft-Hartley definition of supervisors. The same holds true with the firefighters with station captains.

I can go through a listing of labor organizations for the NNU, the category of boatswain, which is within the bargaining unit. These are reasons why we feel the statutory definition should not exclude supervisors as employees, but make it limited to their inclusion in either a unit of supervisors or their inclusion in a traditional unit which has mixed, nonsupervisory and supervisory personnel.

Mr. BONIOR. Just one final question to all of the members, Mr. Chairman.

Can you give me the median salary, the average salary which most people are drawing of pay checks in the union, Captain Faulkner, and go down the line to the teachers and metal workers?

Captain Faulkner. I think our average base is around \$31,000 a year.

Mr. BONIOR. That's fringes and pay, salary?

Captain FAULKNER. I don't think it's that high. I am talking about tugboat masters and that's what I am. The other people in our organization are quite a bit lower than that, I think probably maybe as much as a third lower.

Mr. BONIOR. Captain Werner?

Captain WERNER. As to the pilots, I think the best way to answer that is to say our median salary on an annual basis is about 50 percent less than our counterparts in the United States. We pilots have a 9½-year period of qualification with commensurate salary going up to the senior step; the senior step as a Panama Canal pilot comes up against the Federal pay limit.

However, as I mentioned, this puts us considerably behind our counterpart elsewhere, not only in the United States but other major maritime areas in the world.

Mr. BONIOR. You said you had how many members?

Captain WERNER. We have 225 members, sir.

Mr. BONIOR. Where do they fall in terms of the median salary, the largest group?

Captain WERNER. Beginning salary is approximately \$30,000 a year. The maximum base salary for a senior pilot after 9½ years experience on the Panama Canal is \$47,500. There are other inducements as well.

Mr. HAMILTON. I would like to tell you this, that pilots who are members of the various State pilot boards and so forth in the States run anywhere from \$80,000 to \$100,000 a year. As far as towboat captains are concerned, T.A. & G. membership of the organization includes towboat captains in its grouping, and its contracts call for wages in the neighborhood of \$40,000 for towboat captains plus, of course, the nonwage fringers which amount to another \$3,000 or \$4,000.

Mr. SHEPPARD. Teachers start in, a teacher with a bachelor degree and no service, approximately \$11,000 a year. A teacher with 15 years service and a doctorate degree runs up to approximately \$31,000 per year. School officers are appropriately higher.

Mr. GRAHAM. I have the hardest one of all because we have so many locals in the council, but I want to qualify it by saying that. But I think I would be on safe ground by saying of all of the unions in this we probably average, if you are talking about the average of all of the unions involved, I would lay it at about \$15,000 to \$18,000 a year.

Mr. BONIOR. The reason I ask that, I understand the position people are in of protecting membership and representing your membership. I think in terms of where I am and what I am all about, the minimum wage portion of your testimony, I think, is probably the most important. I am concerned in keeping that and making sure those people on the lower end of the scale who have traditionally been shut out get dealt with fairly.

Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Bauman?

Mr. WALL. Just in answer to your question, Congressman Bonior, the NMU does not have any exact figures right at this point. We will be glad to submit them as soon as we can compile them.

[The information was not received at time of printing.]

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. Mr. Chairman, I want to thank the witnesses for giving us a very detailed and specific list of recommendations, and I think you will find the committee sympathetic to the necessity of protecting the rights of the employees.

I would like to ask if any of your organizations are formally opposed to the treaty?

Mr. WALL. We do not.

Mr. BAUMAN. Only Mr. Graham's? I am familiar with his activities. None of the others did?

Mr. HAMILTON. No.

Mr. BAUMAN. Mr. Wall, you seem to suggest that, notwithstanding the commitments of the administration from the President on down, that no additional costs would be imposed upon the American taxpayers by this treaty or its provisions or implementation, that we should disregard that commitment from President Carter and the Secretary of State and so on and, indeed, in fact, impose upon the taxpayer the general cost of this agreement.

Is that your position?

Mr. WALL. We simply took the position as we stated in our statement following the Comptroller General's position that in picking up these additional costs that there was the question between the shipper and the taxpayer and we emphasized a majority of this cost certainly should not be borne by the single industry, the shipper.

What the mix is we are asking the Congress to determine. We feel that there has been an undue burden on the maritime industry in the user charges.

Mr. BAUMAN. A suggestion was made in one of your statements that we ought to proceed with the study of the sea level canal; I am not sure which of you suggested that, but don't you think that might better await the chance to see how the transition and operation of the canal, and the political situation in Panama develop? It seems to me that although the treaty requires such a study, it does not have to be done immediately.

Mr. GRAHAM. No, Congressman, we didn't ask it be done immediately. It is certainly a long-range program, and we are aware of that, but as far as the metal trades are concerned, to us it's a very important moneymaking factor. We are a little bit selfish there. We can get an awful lot of American construction out of it, so we are certainly proposing it for that reason.

Mr. BAUMAN. Thank you.

Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. Thank you, Mr. Chairman.

I don't have any questions, but I do have one request.

Is there some way we can get a chart or a breakdown of the makeup of tolls currently and what goes into the toll base rate?

Mr. MURPHY. Yes. We will ask the Governor at tomorrow's 2:30 briefing to have that study for you.

Mr. LENT?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Wall, at page 3 of your statement you ask that there be eliminated from the cost structure of the operation of the canal all

items of expense that are not directly related to the movement of ships through the canal, and I just wonder if you could for my benefit flesh that request out a little bit.

For example, would your definition include debt service as part of the cost of movement of ships through the canal?

Mr. WALL. If this is an additional part, if this is a treaty requirement, we have asked that all new expenditures caused by or as a result of the treaty be shared between the shipper and the taxpayer.

Mr. LENT. Would you include within the toll base an element for debt service on the investment of the United States in the canal system?

Mr. WALL. If we had the answer to the previous question as to exactly what goes into the makeup of the present canal toll system, we understand, it's our belief that there are a lot of items that have been in the canal charges that are not directly related to the operation of the canal.

Mr. LENT. Don't you think that debt service on the investment in the enterprise is a proper element for inclusion in the toll base?

Mr. WALL. We understand that those figures were not put in from the very beginning, and if they have allowed them to accumulate over the years we don't know why at this time the shipper is being asked to pay for all of those charges.

Mr. LENT. Let me go to another element:

Would your definition include the cost of early retirement for Canal Zone employees in the tolls?

Mr. WALL. No; it apparently has not been in our consideration.

Mr. LENT. When you say it's not in your consideration, you would urge then the elimination from the inclusion in the tolls base of the cost of early retirement as contemplated under the treaty?

Mr. WALL. That is correct. Our position is basically that many of these families that have been down here came down, their grandfathers built this canal or helped to build it. Their fathers have been here, and many of the present employees were fully expecting to continue on for 20 or 30 years as employees of Uncle Sam in the operation of this canal.

The treaty has changed that and we don't think simply changing the treaty should affect the toll structure of the Panama Canal. It has already had an effect. The configuration of the canal, going back to perhaps a sea level canal, is such that the vessels that cannot get through the canal are uneconomical for the shipbuilder to put into business.

Mr. LENT. One last item: How about the question of depreciation on plant and equipment? Would your definition include that cost, depreciation as an element for inclusion in the tolls base?

Mr. WALL. I think there is no question that the construction of the canal, if it had been done properly from the beginning and the amortization of the interest, had it been done from the beginning, had the Panama Canal been paid interest on the money that they have had on deposit in the United States, that all of these would have had an equalling factor, if it was only to the operation of the canal, and not all of the grounds keeping.

I don't know what the bridge across the canal has to do with the shipper who uses the canal. I don't know what the police and fire department of the Canal Zone Government have to do with the person who is using the canal. These are costs that have been borne by the tolls. We don't think that these costs, if we can get an answer to the previous question, exactly what costs have been in the tolls, we perhaps could structure our answer far better.

Mr. LENT. Well, isn't it a fact that in almost any business the revenues to be derived from that business must cover debt service on the cost of plant and equipment, and must cover the retirement program and other fringe benefits for the employees who are employed in that enterprise and it must cover depreciation and some sort of assigning funds for replacement of plant and equipment that will wear out over the course of the years?

Don't you think that these items ought to be included in the tolls base for future operation of the canal?

Mr. WALL. Congressman Lent, I would agree entirely with you if I were running a private enterprise system here. But we have a lock up in Puget Sound, from Puget Sound to Lake Union, that is owned and operated by the Federal Government, and users of that lock do not pay for the Seattle police department or the fire department, the locks and tolls on the river system of the United States have only recently had a toll charge put in on the 4 cents per gallon of gasoline, all of these things have been provided to U.S. Commerce because there was a knowledge or realization we needed an American Flag merchant marine.

We needed to get a Navy from one side to the other, and we had a public utility here that had the advantage not just to the American shipper or shipowner or nonship owner, but to the people of the United States. So it's not just a question of our running a business and amortizing the costs. If that had been the case we should have done it from the year one and not started in 1965 or 1979.

Mr. LENT. I appreciate your response. I don't know if the American people will appreciate it.

Mr. WALL. I don't, either. I don't, either.

Mr. LENT. I would expect they would not, but I have no further questions, Mr. Chairman.

Thank you.

Mr. MURPHY. There is probably a pretty good difference of opinion on it.

Mr. WALL. I think so. I will agree with you, Jack.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. Thank you, Mr. Chairman.

You know, consistently from people testifying to us we have heard of the problem that is seen in the future of two employees working side by side and under different wage scales and under different work rules.

Can somebody expand on that as to why you think that is going to be the case?

Mr. WALL. Well, I think we can take a shot at it, Congressman Lowry.

There was a gold and silver standard established a great number of years ago which was abolished and then it became a U.S.-

citizen/non-U.S.-citizen standard, and we have worked to eliminate that.

The unions represented at this table put a lot of work into getting equality of treatment for all of the employees of the canal, and there have been great strides made since the unions have been here and been given the right under Executive Order 1099 to represent the people.

We don't have to go into the past practices of this colony that exist. So we don't want to see another form of dual weight structure put in for the new employees coming in. As a matter of fact, our clause on this was altered a little bit because anyone who is RIFed, who is a present employee and RIFed out and then should want to return as a replacement, would be considered a new employee and could come back at a lower wage scale.

We are just fearful once this dual system is established again that we will be back to whatever euphemism we want to design. Gold, silver, United States, non-United States, old employee, new employee, we don't think it's right.

Mr. LOWRY. Mr. Sheppard?

Mr. SHEPPARD. Yes. We have the problem that not only will there be an attempt to separate the United States and the Latin American teachers, but also the DOD intends that all new teachers who come into the area will be teaching at the much lower wage scale of the Department of Defense. Now you put two teachers that are in one school doing the same job and there is certainly, even despite the fact that the teachers may be dedicated, there is going to be a lot of anxiety, a lot of anger, or so forth, it tends to be divisive between the force.

Now, are two teachers going to put out as much work, as much education, for a great difference in salary? They can realize the fact that there are differences in experience, but when you have two teachers with the same degree, same number of years of experience and they are at \$6,000 difference in salary, it becomes a big factor.

Mr. LOWRY. I think we can see why this is an important point. Are you saying we can address this and this is not being addressed in the implementing legislation?

Mr. WALL. That's correct.

Mr. LOWRY. Is it not being addressed completely?

Mr. WALL. It is not being addressed.

Mr. SHEPPARD. It is not specifically in the case of the teacher force. DOD has offered a compromise agreement to which they have again another compromise between the present DOD pay system and our pay system, but that only applies to teachers who are presently here.

But they intend to put it in in the future, and there is nothing in the implementing legislation that prevents them from doing anything in the future they desire on the pay scale. That's why we are trying to insist on the Washington, D.C. pay scale for all.

Mr. LOWRY. Thank you.

Just one more question: On the railroad employees, I think a statement was made that there might be up to 30 employees leaving the railroad system. Is this a definite thing? Is there going to be a certain number of employees leaving, present employees?

Mr. TARTAR. The complete railroad will be turned over to Panama and the only way they can stay will be as an employee of the Republic of Panama or either loan labor from the Company to the Republic of Panama, but it will no longer belong to the U.S. Government.

Mr. LOWRY. Thank you.

Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. Thank you, Mr. Chairman.

I have a couple of questions of Mr. Wall.

I just was wondering, would you encourage the United States to pay for some of the ancillary functions that are required to run the Suez Canal?

Mr. WALL. No; I would not. It is not an entity of the U.S. Government.

Mr. CARNEY. OK. I don't think this canal is going to be an entity of the U.S. Government either. I don't see the difference.

Now, I have to add a comment, and this might be a little bit unfair, that you also said and I quote: "That you represent the people in the Canal area, the three generations of the people." How come you didn't take a stand on the treaty? I don't understand that.

Mr. WALL. I didn't say we represented the three generations. The Executive order of Senator Kennedy or President Kennedy was signed in the early 1960's and it was our first time we came down here as the MNU to represent these people.

Mr. CARNEY. That's correct. You went on to say these were people here for three generations and your concerns were definitely their concerns.

Mr. WALL. Yes. Our position was we were here to represent our people to the best of our ability, regardless of who their employer was, and that we wanted to see the safeguards in the treaty take care of these people.

There was a reference to the representative of these people, and it was to be handled through the implementing legislation, and we are here now.

Mr. CARNEY. I appreciate that.

Mr. Werner, Captain, you have 225 in your union or that are captains of it, and two of them are Panamanians.

Captain WERNER. Yes, sir.

Mr. CARNEY. Let me ask you how many women are involved in that?

Captain WERNER. We are looking forward to getting our first woman pilot sometime in the future. At the present there are ladies in training in various nautical academies in the United States and we will welcome them with open arms. But at the present time there are no ladies who have the qualifications and experience and background to apply for the job.

As I say, we are looking forward to seeing them.

Mr. CARNEY. Would it be fair to assume that more than 50 percent of your membership does meet the Federal level of \$47,500?

Captain WERNER. Yes, sir.

Mr. CARNEY. Thank you very much.

Mr. MURPHY. Dr. Evans?

Mr. EVANS. I would like to ask a question about the teachers. I think you mentioned there were 625 teachers.

Mr. SHEPPARD. The entire educational force includes school officers and the other people.

Mr. EVANS. That did not refer just to the college?

Mr. SHEPPARD. It does not include the college, sir. We have a total permanent staff at the college of approximately 30 instructors. We have a large number of part-time instructors also at the college.

Mr. EVANS. The sabbatical provisions that were questioned or referred to are for full time or part time or both?

Mr. SHEPPARD. I referred to full-time people who have completed 6 years of service with the Canal Zone Government.

Mr. EVANS. I would like to ask Mr. Wall a question.

You seem to be quite concerned over the possible creation of a dual system or recreation of a dual system. Is one of the techniques you envision that which involves the lowering of the grade or an existing employee while retaining the present salary so when the person leaves the job it is filled at a lower level? Is that the technique you envision?

Mr. WALL. I think there is that fear, but they have made it clear that only the present employees will be protected in the present job classification and the salary level, which means to us the inference is that everyone coming in new will come in at a lower rate of pay for the same work.

Mr. EVANS. But are you aware of any of this being done at the present time?

Mr. WALL. It is not being done at the present time, no.

Mr. EVANS. I would like to ask Captain Werner a question.

Could you explain to me why with 225 pilots and many years you have been in existence less than 1 percent are Panamanians? What is the reason for the slow integration of the Panamanians into the system? There must be reasons.

Captain WERNER. Yes; there is a very good reason, and I think I tried to address that in my position paper, that is, essentially the Republic of Panama was without a maritime nation until 1927. They had no formal academy for the training of a Panama cadet to go on board the numerous Panama flag ships that fly the seas and get the proper background to become pilots.

Consequently, the academy in Panama is turning out cadets as quickly as possible; they will in turn go on Panama-flag ships. There are also U.S. citizens who do have the proper background that will be coming in to be pilots. But the answer to your question essentially is that Panama has not been a maritime nation and they are awakening to the fact that they can play a major role in the maritime future of the world and they are taking significant steps toward remedying the situation in providing individuals with the proper background to become Panamanian pilots.

Mr. EVANS. You would say then if there had been no treaty this picture would have changed as time passed fairly rapidly?

Captain WERNER. Well, this is entirely up to the Republic of Panama. They have to provide the training for these people.

Mr. EVANS. But the way it is now then without the treaty the picture will change because of the existence of the facilities in Panama; is that right?

Captain WERNER. Under the present regulations the citizenship is open to Panama or U.S. citizens, so we have been encouraging Panamanians to come on the pilot force, that is correct, regardless of the treaty.

Mr. BONIOR. Will the gentleman yield?

Mr. EVANS. I yield.

Mr. BONIOR. What has our Academy policy been? I suspect I should know that, but I don't know the terms of accepting non-U.S. citizens.

Captain WERNER. I think Mr. Murphy addressed that particular question in the beginning remarks. I have contacted various State maritime academies in the United States who would be most willing to accept Panamanian citizens and students for their programs.

Mr. EVANS. What has been the history? Have they accepted them in the past? Is this just new or a change of policy?

Captain WERNER. They have accepted them in the past when they have found applicants willing to go to the various State and Federal academies. There are presently two in Kingsport, which is a U.S. Federal Merchant Marine Academy and, as Mr. Murphy mentioned, there are a number of Iranians going to other State maritime academies but, yes, of course, U.S. funding and also motivation as far as the Panamanian students go.

Mr. MURPHY. Are there any other questions?

Gentlemen, we thank you very much.

Mr. BONIOR. Mr. Chairman, I am sorry, I just have one other question. I will be very brief.

I would like to know in terms of this early retirement situation and retirement in general how many of your membership are paying social security, of all of the people here who are paying into the U.S. Social Security System?

None, is that correct?

Mr. WALL. None.

Mr. BONIOR. Let me follow it up by asking if you can give me some rough estimates on how many of them are qualified for social security in other positions or jobs they have held prior to being in the position they now have?

Mr. WALL. I would say none of our membership.

Mr. BONIOR. None have qualified under 40 quarters?

Mr. WALL. No.

Mr. SHEPPARD. We are certainly going to have some small number, but I have no idea. I, myself, am qualified.

Mr. BONIOR. You do qualify?

Mr. SHEPPARD. Yes; I qualify through military service and paying social security and through private work.

Mr. BONIOR. How about you gentlemen?

Captain WERNER. Our members generally come from union pension plans, and quite often they have a number of vested years which are not transferrable into the civil service program, so they, unless they have vested time, they lose that time.

Mr. BONIOR. Many of them I assume have worked, piloted in the States; is that correct?

Captain WERNER. Not necessarily piloting. The majority of our people come from either the deep sea field or the inland towboat profession before becoming pilots.

Mr. BONIOR. You paid social security?

Captain WERNER. They generally pay into the union pension funds as well as social security.

Mr. BONIOR. I see. OK.

Thank you.

Mr. MURPHY. Thank you very much, gentlemen.

The next panel will be Mr. James J. O'Donnell, president, AFGE, Local 14, accompanied by Barbara Corsens, president, Nurses Union; R. O'Conner, president, Customs Union, and David Baglien, first vice president, AFGE, Local 14.

STATEMENTS OF JAMES O'DONNELL, PRESIDENT, AFGE, LOCAL 14, ACCOMPANIED BY DAVID BAGLIEN, FIRST VICE PRESIDENT, AFGE, LOCAL 14

Mr. MURPHY. Mr. O'Donnell, what happened to the rest of the panel?

Mr. O'DONNELL. Barbara Corsen, whom you met last night, worked the midnight shift and she told me she was deathly afraid after working all night she would find it very difficult to get her day during this session. Mr. O'Conner is working, and he cannot attend, so that leaves just the Local 14.

Mr. MURPHY. If you will proceed then?

Thank you.

Mr. O'DONNELL. Thank you, Mr. Chairman, and thank you for the opportunity to be here today.

I have 54 pages of testimony which I would like to summarize for you rather quickly.

[The statement follows:]

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Box 1703
Balboa, Canal Zone

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM JAMES J. O'DONNELL, PRESIDENT OF LOCAL 14, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES. BECAUSE LOCAL 14 IS THE LARGEST OF THE SEVERAL UNIONS REPRESENTING PRINCIPALLY UNITED STATES CITIZEN EMPLOYEES, MY COMMENTS TODAY WILL REFLECT PRINCIPALLY THE VIEWPOINT OF UNITED STATES EMPLOYEES. ALTHOUGH THERE ARE POINTS OF DISAGREEMENT AMONG THE VARIOUS UNIONS REPRESENTING BOTH U. S. AND NON-U. S. CITIZEN EMPLOYEES, ESSENTIALLY REGARDING COLLECTIVE BARGAINING, THERE ARE DISTINCT BROAD AREAS OF AGREEMENT ON MOST ISSUES RELATING TO THE TREATY. EVEN THOUGH I WILL CONFINE MY TESTIMONY TO THE EFFECT OF THE PROPOSED LEGISLATION ON MY OWN MEMBERS, I ASSURE YOU THAT AFGE LOCAL 14 FULLY SUPPORTS THE ASPIRATIONS OF THE OTHER UNIONS FOR THE LEGISLATION REQUIRED TO CARRY OUT THOSE TREATY PROVISIONS THAT INSURE THAT "CONDITIONS OF EMPLOYMENT WILL BE NO LESS FAVORABLE THAN AT PRESENT".

WITH THE RATIFICATION OF THE TREATY, AN ESTABLISHED FACT, WE MUST NOW FACE THE QUESTION OF HOW TO KEEP THE CANAL RUNNING AT TOP EFFICIENCY UNDER NEW AND VERY DIFFERENT CONDITIONS. THE KEY TO THAT QUESTION, AS GOVERNOR PARFITT AND MANY OF HIS PREDECESSORS HAVE RECOGNIZED, IS THE WORKFORCE. GOVERNOR PARFITT HAS DEMONSTRATED HIS CONCERN FOR THE WORKFORCE BY GOING TO BAT FOR US DURING THE TREATY NEGOTIATION PROCESS AND DURING THE DRAFTING OF THE IMPLEMENTING LEGISLATION. HE HAS ALSO TRIED HARD TO KEEP US INFORMED. UNFORTUNATELY, HOWEVER, HE HAS TO SPEAK THROUGH LAYERS OF COMMAND, AND THE ADMINISTRATION'S BILL COMES TO YOU FOLLOWING A LONG PROCESS OF FILTRATION. THE RESULT IS THAT

We do in unity that which is impossible in disunity

YOU IN CONGRESS RECEIVE A DISTORTED VIEW OF THE NEEDS, CONCERNS, AND TEMPER OF TODAY'S CANAL WORKFORCE.

IN THE PAST, THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES HAS HAD THE OPPORTUNITY OF TESTIFYING TO THIS COMMITTEE ON IMPROVING PROTECTIONS FOR FEDERAL EMPLOYEES. TODAY, THE COMMITTEE, THROUGH THE SPONSORSHIP OF H. R. 1716 AND H. R. 111 IS IN THE DRIVER'S SEAT, BUT I WOULD LIKE TO PRESENT TO YOU WHAT NEEDS TO BE AMENDED IN THAT LEGISLATION IN ORDER TO ASSURE THAT THE CANAL'S KEY U. S. CITIZEN EMPLOYEES WILL STAY ON THE JOB AND WILLINGLY TRAIN THEIR PANAMANIAN REPLACEMENTS, AND THAT TOMORROW'S VACANCIES IN HARD-TO-FILL POSITIONS WILL CONTINUE TO BE FILLED BY TOP FLIGHT PERSONNEL. IN GENERAL, THE LEGISLATION TAKES CARE OF MOST OF THE GUARANTEES ON CONDITIONS OF EMPLOYMENT CALLED FOR BY THE TREATY, BUT CERTAIN ESSENTIAL CHANGES NEED TO BE MADE.

AS MIGHT BE EXPECTED CERTAIN FEARS AND APPREHENSIONS REMAIN IN THE MINDS OF THE EMPLOYEES CONCERNING THE EVENTUAL TURNOVER OF THE PANAMA CANAL AND THE CANAL ZONE TO THE REPUBLIC OF PANAMA. I AM CONSTANTLY BESIEGED BY EMPLOYEES ASKING, "IF U. S. EMPLOYEES ARE EXPECTED TO REMAIN ON THE ISTHMUS OVER THE NEXT 21 YEARS, WILL THEY AND THEIR FAMILIES BE ABLE TO LEAD THEIR LIVES WITHOUT FEAR OR THE CONSTANT THREAT OF HARRASSMENT?" "WHAT KIND OF JOB SECURITY WILL BE AFFORDED", "WHAT KIND OF INCENTIVES WILL BE PROVIDED FOR ME TO STAY AND TRAIN MY PANAMANIAN REPLACEMENT?"

THESE ARE JUST SOME OF THE QUESTIONS THAT WORKERS ARE ASKING. UNFORTUNATELY, I CANNOT PROVIDE THE ANSWERS TO THESE QUESTIONS. INSTEAD, I AM RELYING ON YOU GENTLEMEN AND YOUR COLLEAGUES IN THE HOUSE OF REPRESENTATIVES WHO WILL SOON BE VOTING ON THE IMPLEMENTING LEGISLATION, TO PROVIDE THE NECESSARY JOB SAFEGUARDS, BENEFITS, AND INCENTIVES TO RETAIN THE DEDICATED EMPLOYEES CURRENTLY

WORKING FOR THE FEDERAL GOVERNMENT ON THE ISTHMUS, AND FOR THOSE WE WILL STILL NEED TO RECRUIT IN THE COMING YEARS.

AFGE BELIEVES THE FOLLOWING CONSIDERATIONS ARE ABSOLUTELY NECESSARY TO IMPROVE EMPLOYEE MORALE AND INSURE THE CONTINUED EFFECTIVE OPERATION AND SUCCESS OF THE PANAMA CANAL.

1. THE EMPLOYEES WITHOUT QUESTION NEED A COLLECTIVE BARGAINING SYSTEM. TOO OFTEN IN THE PAST, MANAGEMENT HAS WITHDRAWN BENEFITS WON BY EMPLOYEES. I OFFER AS AN EXAMPLE THE ACTION OF THE FORMER ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS), VICTOR V. VEYSEY, IN HIS CAPACITY AS CHAIRMAN, CANAL ZONE CIVILIAN PERSONNEL POLICY COORDINATING BOARD, DEPRIVED MANY EMPLOYEES OF THEIR ELIGIBILITY FOR A PAY DIFFERENTIAL AND FOR HOUSING ASSIGNMENT WITHIN THE CANAL ZONE. THE END RESULT OF THIS ARBITRARY MANAGEMENT ACTION WAS A COSTLY JOB ACTION THAT RESULTED IN THE LOSS TO BOTH SHIPPERS AND THE CANAL ORGANIZATION OF MANY HUNDREDS OF THOUSANDS OF DOLLARS. WHY DID THAT ACTION EVEN TAKE PLACE? SIMPLY BECAUSE LABOR GROUPS WERE NOT CONSULTED IN GOOD FAITH ON THE DECISIONS AFFECTING THE TERMS OF THEIR WORKING CONDITIONS!

LOCAL 14 FIRMLY BELIEVES THAT ONLY THROUGH THE COLLECTIVE BARGAINING PROCESS AND THE APPLICATION OF TITLE VII OF THE CIVIL SERVICE REFORM ACT CAN THE RIGHTS AND BENEFITS EARNED BY EMPLOYEES BE PROTECTED. ON OCTOBER 13, 1978, PRESIDENT CARTER SIGNED THE CIVIL SERVICE REFORM ACT, DESIGNED TO IMPROVE GOVERNMENT EFFICIENCY AND TO BALANCE MANAGEMENT AUTHORITY WITH EMPLOYEE PROTECTIONS. AMONG THE MAJOR FEATURES OF THE ACT ARE AN INDEPENDENT AND EQUITABLE APPEALS PROCESS; PROTECTIONS AGAINST ABUSE OF THE MERIT SYSTEM; AND INCENTIVES AND REWARDS FOR GOOD WORK AND SKILLFUL MANAGEMENT. SOME OF THE PROVISIONS OF THE CIVIL SERVICE REFORM ACT TOOK EFFECT HERE IN THE CANAL ZONE IN JANUARY OF THIS YEAR. THE APPLICATION OF THIS ACT TO THE CANAL ZONE DOES NOT MEAN THAT LABOR

HAS ANY INTENTION OF REDUCING MANAGEMENT'S RIGHT TO MANAGE. ON THE CONTRARY, THAT RIGHT IS RECOGNIZED AND RESPECTED. ALL WE IN THE LABOR MOVEMENT ASK IS THAT TRUE REPRESENTATION FOR EMPLOYEES BE AFFORDED THROUGH THE ACKNOWLEDGED AND LONG ACCEPTED PROCESS OF COLLECTIVE BARGAINING AS RECOGNIZED IN TITLE VII, OF THE CIVIL SERVICE REFORM ACT OF 1978. LOCAL 14, AFGE, IS REQUESTING THAT SECTION "C" ON PAGE 30 OF H. R. 1716 BE DELETED, AS WELL AS SECTION 225 UNDER SUBCHAPTER VII, LABOR MANAGEMENT RELATIONS IN H. R. 111.

2. WE BELIEVE GENUINE INCENTIVES SHOULD BE ESTABLISHED THAT WILL PROVIDE FOR THE RECRUITMENT AND RETENTION OF EMPLOYEES HIRED OFF THE ISTHMUS. AS YOU MAY KNOW, THE PRESENT TROPICAL PAY DIFFERENTIAL WAS REDUCED BY THE SECRETARY OF THE ARMY FROM 25% TO 15% IN 1964. HOWEVER, AS OF OCTOBER 1979, THE WORKING ENVIRONMENT FOR EMPLOYEES WILL BE DRASTICALLY CHANGED IN ALMOST EVERY CONCEIVABLE RESPECT AS A RESULT OF THE PANAMA CANAL TREATIES. THE ESTABLISHMENT OF SOME KIND OF ADDITIONAL MONETARY INCENTIVE WOULD BE IN ORDER. WE BELIEVE THE RESTORING OF THE TROPICAL DIFFERENTIAL TO THE FORMER RATE OF 25% AND TO BE EFFECTIVE ON OCTOBER 1, 1979, WOULD BE A STEP IN THE RIGHT DIRECTION FOR THOSE EMPLOYEES WHO ELECT TO STAY AND MAKE THE TREATIES WORK FOR THE GOOD OF THE U. S. AND WORLD COMMERCE.

IT SHOULD BE NOTED THAT CURRENT REGULATIONS ALREADY PERMIT THE GRANTING OF A TROPICAL PAY DIFFERENTIAL UP TO A MAXIMUM OF 25%. CONSEQUENTLY, THERE IS NO PRECEDENT-SETTING INVOLVED HERE. YOU WOULD SIMPLY BE RETURNING TO THE EMPLOYEES SOMETHING WHICH HAD BEEN INCORRECTLY TAKEN AWAY FROM THEM.

3. WE KNOW THAT THE QUALITY OF LIFE FOR EMPLOYEES WILL BE ADVERSELY AFFECTED AFTER OCTOBER 1979. EMPLOYEES ARE EXTREMELY CONCERNED ABOUT THE FACT THAT PX, COMMISSARY, AND POSTAL PRIVILEGES WILL BE DENIED THEM AFTER 5 YEARS. THIS IS CORRECTLY PERCEIVED AS A DEFINITE DECLINE IN THEIR QUALITY OF LIFE. IN PANAMA

ITEMS SUCH AS ELECTRICITY, TELEPHONE, ETC., ARE TRIPLE THE COST FOR LIKE ITEMS OFFERED IN THE CANAL ZONE. FREQUENTLY, THE PANAMANIAN ECONOMY SUFFERS SHORTAGES IN NECESSARY STAPLE FOODSTUFFS. EMPLOYEES ASK ME, "HOW WILL I PROVIDE FOR MY FAMILY DURING THESE PERIODS?" I BELIEVE THAT ALL U. S. EMPLOYEES SHOULD BE ADMINISTRATIVELY EXTENDED PX, COMMISSARY AND U. S. POSTAL PRIVILEGES UNTIL THE YEAR 2000. IRONICALLY, GENTLEMEN, WHEN I BROUGHT UP THIS PROPOSAL TO GENERAL DOLVIN AND ASSISTANT SECRETARY OF STATE DAVID POPPER, THEY BRUSHED IT ASIDE WITH THE COMMENT THAT THIS ITEM WAS LOCKED INTO THE TREATY. STRANGELY ENOUGH, HOWEVER, WHENEVER PANAMA ASKS FOR RECONSIDERATIONS ON TREATY MATTERS, WE SUDDENLY FIND THE TERMS OF THE TREATY ARE AGAIN NEGOTIATED. I RESPECTFULLY SUGGEST THAT WHAT IS GOOD FOR THE GOOSE IS GOOD FOR THE GANDER!!!

4. I WOULD LIKE TO QUOTE THE SPECIFIC LANGUAGE FROM ARTICLE 10 OF THE TREATIES:

"THE UNITED STATES OF AMERICA SHALL WITH RESPECT TO THE TREATIES: (b)... SEEK SPECIAL LEGISLATION TO PROVIDE MORE LIBERAL ENTITLEMENT TO, AND CALCULATION OF, RETIREMENT ANNUITIES THAN IS CURRENTLY PROVIDED FOR BY LAW".

IT IS PERFECTLY CLEAR FROM THE LANGUAGE USED IN ARTICLE 10 THAT "LIBERALIZED BENEFITS" AND "LIBERAL CALCULATION OF THOSE BENEFITS" ENVISIONS TWO SEPARATE, SPECIFIC ACTIONS, I.E. (1) TO PROVIDE MORE GENEROUS AND LIBERAL BENEFITS THAN THE REGULATIONS CURRENTLY PROVIDE IN A LARGE SCALE RIF ACTION, AND (2) AFTER THE LIBERALIZATION OF BENEFITS HAS OCCURRED THEN A LIBERAL CALCULATION OF THE MORE GENEROUS BENEFITS MUST THEN BE ACCOMPLISHED. ONE DOES NOT HAVE TO BE AN EXPERT IN SEMANTICS TO SEE THIS. BUT, IS THIS IN FACT, BEING DONE? I THINK NOT!

I WOULD LIKE TO ADDRESS THE QUESTIONS OF THE KIND OF ANNUITY THAT WOULD MEET THE REQUIREMENTS OF ARTICLE 10. THE ADMINISTRATION PROPOSES THAT EMPLOYEES EARN AN

ANNUITY AT THE RATE OF $2\frac{1}{2}\%$ OF THEIR AVERAGE THREE YEARS PAY FOR SUCH SERVICE AS DOES NOT EXCEED 20 YEARS. THIS IS $\frac{1}{2}\%$ MORE THAN REGULATIONS CURRENTLY PERMIT. WE PROPOSE ON THE OTHER HAND, THAT THE RATE OF ANNUITY BE COMPUTED AT 3% OF THE EMPLOYEE'S HIGHEST ONE YEAR'S PAY FOR SUCH SERVICE AS DOES NOT EXCEED 20 YEARS. WITH ALL DUE RESPECT TO THE ADMINISTRATION'S PROPOSAL, I DO NOT BELIEVE THAT AN ADDITIONAL $\frac{1}{2}\%$ WILL ATTRACT AND KEEP THE TYPE OF CAREER MINDED EMPLOYEES WE NEED. QUITE FRANKLY, WE ARE TALKING ABOUT A NEW AGENCY THAT WILL BE OUT OF EXISTENCE IN SOME 21 YEARS. A 3% ANNUITY RATE IS A DESPERATELY NEEDED INCENTIVE TO IMPROVE EMPLOYEE MORALE, TO KEEP KEY EMPLOYEES, AND TO CONTINUE THE EFFICIENCY OF THE ORGANIZATION DURING THE DIFFICULT AND UNCERTAIN DAYS THAT LIE AHEAD OF US.

5. FOR THE PAST 70 YEARS, THE HEALTH CARE SYSTEM IN THE CANAL ZONE HAS PROVIDED OUTSTANDING SERVICES TO EMPLOYEES, SEAMEN OF THE WORLD AND OTHERS. MANY CONTRIBUTIONS TO MEDICAL KNOWLEDGE HAVE EMERGED FROM THE CANAL ZONE MEDICAL FACILITIES. LOCAL 14 HAS BEEN PROUD OF OUR SYSTEM OF HEALTH CARE AND WE WOULD LIKE TO SEE IT CONTINUE ON AFTER THE TREATY. WE ARE CONCERNED ABOUT MAINTAINING THE CURRENT HIGH STANDARDS FOR PHYSICIANS AND DENTISTS. AT THE PRESENT TIME THE CANAL ZONE GOVERNMENT HAS A LICENSING BOARD IN ADDITION TO A HOSPITAL CREDENTIAL COMMITTEE. WE ARE INTERESTED IN KEEPING THE CREDENTIALS COMMITTEE ACTIVE AFTER OCTOBER 1979. LOCAL 14 BELIEVES THAT FOREIGN MEDICAL GRADUATES SHOULD DEMONSTRATE A WORKING KNOWLEDGE IN ENGLISH. THEY SHOULD BE REQUIRED TO PASS A STANDARD MEDICAL EXAM SUCH AS U. S. SPECIALTY BOARDS, FLEX, NATIONAL BOARDS, OR ECFMG. FOR DENTISTS, ADA NATIONAL BOARD AND/OR U. S. STATE LICENSES SHOULD BE A MINIMUM STANDARD.

LIVING CONDITIONS AND THE QUALITY OF LIFE FOR ALL U. S. CITIZEN EMPLOYEES NOW WORKING IN THE CANAL ZONE ARE IN CONSIDERABLE MEASURE, RELATED TO THE AVAILABILITY AND QUALITY OF MEDICAL CARE. THE QUALITY OF MEDICAL CARE DEPENDS ON MANY THINGS,

ONE OF WHICH WILL BE THE STANDARDS USED TO EVALUATE PHYSICIANS AND DENTISTS. WHETHER PHYSICIANS AND DENTISTS NOW EMPLOYED WILL REMAIN WORKING UNDER THE NEW ORGANIZATION AFTER OCTOBER 1979 WILL DEPEND ON THE CREDITIALS AND SKILLS OF THEIR NEWLY HIRED COLLEAGUES IN THE HEALTH FIELD. LOCAL 14 BELIEVES THAT THE CURRENT CRITERIA MUST BE MAINTAINED TO ASSURE QUALITY CARE FOR PATIENTS AND TO RETAIN THOSE PHYSICIANS AND DENTISTS NOW EMPLOYED.

6. CONSIDERATION SHOULD BE GIVEN TO TEACHERS AND RAILROAD EMPLOYEES. LOCAL 14 WOULD LIKE TO REQUEST THAT TITLE 5, UNITED STATES CODE BE AMENDED TO INCLUDE AS CREDITABLE SERVICE FOR PURPOSES OF CIVIL SERVICE RETIREMENT SYSTEM CERTAIN PERIODS OF SERVICE BY INDIVIDUALS BEFORE THE DATE THEY WERE EMPLOYED BY THE PANAMA CANAL COMPANY OR THE PANAMA RAILROAD COMPANY. TITLE 5 SHOULD BE AMENDED TO INCLUDE AS CREDITABLE SERVICE FOR PURPOSES OF CIVIL SERVICE RETIREMENT SYSTEM CERTAIN PERIODS OF PUBLIC SCHOOL SERVICE OUTSIDE OF THE CANAL ZONE BY INDIVIDUALS WHO BECOME SUBJECT TO SUCH PROVISIONS FOR PUBLIC SCHOOL SERVICE WITHIN THE CANAL ZONE. WE ARE REQUESTING THAT TEACHERS AND EDUCATIONAL ADMINISTRATORS BE ALLOWED TO PURCHASE CREDIT UP TO TEN YEARS FOR PUBLIC SCHOOL SERVICE IN THE UNITED STATES. LOCAL 14 IS ASKING FOR EQUITY WITH THE DISTRICT OF COLUMBIA TEACHERS WHO BY FEDERAL LEGISLATION, SERVE AS A STANDARD FOR CANAL ZONE TEACHERS PAY AND WHO HAVE HAD THE BUY-IN OPTION FOR THE PAST FIFTY YEARS. LOCAL 14 IS REQUESTING THAT THE SECRETARY OF THE TREASURY BE ALLOWED TO TRANSFER TO THE CIVIL SERVICE RETIREMENT AND DISABILITY FUND FROM THE RAILROAD RETIREMENT ACCOUNT OR THE RAILROAD RETIREMENT SUPPLEMENTAL ACCOUNT AN AMOUNT EQUAL TO THE AMOUNTS COLLECTED FROM PRESENT EMPLOYEES WHO WERE EMPLOYED WITH A RAILROAD BEFORE THE DATE THEY WERE EMPLOYED BY THE PANAMA CANAL COMPANY OR THE PANAMA RAILROAD COMPANY. AGAIN, THIS IS NO PRECEDENT SETTING REQUEST. EMPLOYEES OF THE ALASKAN R. R. CURRENTLY ARE PERMITTED TO DO THIS.

7. WE ARE ASKING THAT THE IMPLEMENTING LEGISLATION CONCERNING EMPLOYEE BENEFITS AND PROTECTIONS SHOULD BE EXTENDED TO THE EMPLOYEES OF ALL U. S. AGENCIES CONDUCTING OPERATIONS ON THE ISTHMUS. IT IS AN ACCEPTED FACT THAT THE PANAMA CANAL TREATIES OF 1977 WILL CAUSE SERIOUS DISRUPTION IN THE EVERYDAY LIVES AND WELFARE OF WORKERS EMPLOYED BY ALL FEDERAL AGENCIES IN THIS AREA. WE ASK THAT THE SAME BENEFITS, PROTECTIONS AND RIGHTS AFFORDED TO MEMBERS OF THE PANAMA CANAL COMPANY ORGANIZATION AND THE NEW PANAMA CANAL COMMISSION BE EXTENDED TO THE EMPLOYEES OF ALL U. S. FEDERAL AGENCIES ON THE ISTHMUS OF PANAMA. SPECIFICALLY, A VERY IMPORTANT GROUP OF EMPLOYEES, NAMELY CANAL ZONE DOD AGENCY WORKERS, ARE NOT EQUALLY PROTECTED UNDER THE TERMS OF THIS TREATY, NOR ARE THEY EQUALLY PROVIDED FOR DURING THE LIFE OF THE TREATY. THE LACK OF EQUALITY OF PROTECTION FOR THESE DOD EMPLOYEES WOULD BE HIGHLY DISCRIMINATORY. THE IMPORTANCE OF THIS GROUP OF EMPLOYEES CANNOT BE OVER-EMPHASIZED. DURING THE NEXT 21 YEARS THEY WILL BE REQUIRED TO INSURE THAT VITAL FUNCTIONS ARE MAINTAINED. ANY DOD AGENCY REALIGNMENT, CONSOLIDATION, TRANSFER, OR ELIMINATION OF FUNCTION WHICH AFFECT THE EMPLOYEES LIVING AND WORKING CONDITIONS AS A DIRECT RESULT OF THE TREATY, SUCH AS THE LOSS OF THE U. S. COURT SYSTEM AND THE LOSS OF U. S. JURISDICTION AND SOVEREIGNTY MUST BE CONSIDERED AS ADVERSELY AFFECTING THEM AS IT DOES THEIR COLLEAGUES IN THE PANAMA CANAL ORGANIZATION. THEREFORE, THESE EMPLOYEES MUST RECEIVE EQUAL CONSIDERATION AND FUTURE EMPLOYMENT PROTECTIONS AS PROPOSED FOR PANAMA CANAL COMPANY EMPLOYEES IN THE IMPLEMENTING LEGISLATIVE PACKAGE.

HISTORICALLY, THE 1955 EISENHOWER/REMON TREATY ESTABLISHED THE GOVERNMENT CANAL ZONE MERIT SYSTEM WHICH PLACED ALL U. S. EMPLOYEES AT PARITY WITH RESPECT TO:

A. COMPENSATION

B. RETIREMENT ENTITLEMENT

- C. JOB PROTECTION RIGHTS
- D. HOME LEAVE ENTITLEMENT
- E. TROPICAL DIFFERENTIAL

THIS RESULTED IN A UNIFORM NON-DISCRIMINATORY CIVIL SERVICE FOR THE CANAL ZONE EMPLOYEES BOTH PANAMA CANAL COMPANY/GOVERNMENT AND DOD AGENCY WORKERS.

THE MERIT SYSTEM WAS ACCEPTED BY MANAGEMENT AND ALL U. S. EMPLOYEES AS APPROPRIATE AND EQUITABLE SINCE ALL WERE EXPOSED TO THE SAME LIVING AND WORKING CONDITIONS WITHIN THE SAME GEOGRAPHIC AREA.

IT NOW APPEARS THAT THE NEW TREATY, IF IMPLEMENTED BY LEGISLATION, ACCORDING TO THE STRICT WORDING OF THE TREATY, WILL CREATE A DUAL CIVIL SERVICE SYSTEM FOR U. S. EMPLOYEES - DISCRIMINATING AGAINST DOD EMPLOYEES - AND ESSENTIALLY TURNING THE CLOCK BACK TO PRE-1955 CONDITIONS. FOR EXAMPLE THE TREATY DOES NOT PROVIDE U. S. EMPLOYEES OF OTHER GOVERNMENT AGENCIES THE 2½% PER YEAR TOWARD RETIREMENT, NOR THE VOLUNTARY RETIREMENT OPTION OR THE ANNUAL GOVERNMENT PAID ROUND TRIP FOR DEPENDENTS EDUCATION, AS IS PROPOSED FOR EMPLOYEES OF THE NEW PANAMA CANAL COMMISSION.

SINCE ALL U. S. CITIZEN EMPLOYEES OF THE NEW PANAMA CANAL COMMISSION AND DOD AGENCIES DURING THE NEXT 21 YEARS WILL BE LIVING AND WORKING WITHIN A FOREIGN COUNTRY, SUBJECT TO THE IDENTICAL POLITICAL-ECONOMIC CONDITIONS, ANYTHING LESS THAN AN EQUAL CIVIL SERVICE SYSTEM FOR BOTH GROUPS OF U. S. EMPLOYEES WOULD BE INTOLERABLE, DISCRIMINATORY IN THE EXTREME, AND CERTAINLY NOT IN THE BEST INTERESTS OF THE U. S. GOVERNMENT.

THE GREAT MAJORITY OF EMPLOYEES OF THE VARIOUS FEDERAL AGENCIES CAME TO THE ISTHMUS FULLY EXPECTING A LIFETIME CAREER ON THE ISTHMUS. IN MANY INSTANCES, THEY LEFT HOME, FAMILY, AND FRIENDS IN ORDER TO WORK OVERSEAS FOR THE UNITED STATES GOVERNMENT IN THEIR CHOSEN CAREER FIELDS. I KNOW THAT THEY HAVE ALWAYS

HAD THE BEST INTEREST OF THE U. S. GOVERNMENT AT HEART. THE ADMINISTRATION CANNOT NOW SIMPLY PULL THE RUG OUT FROM UNDER THEM WITHOUT CARING OR MAKING SOME POSITIVE ADJUSTMENT FOR THEIR FUTURE WELL BEING. I FIRMLY BELIEVE THAT THE COMMENTS PROVIDED YOU AND THE PROPOSED CHANGES TO THE IMPLEMENTING LEGISLATION THAT I AM PRESENTING REPRESENT THE BEST MEANS OF INSURING THE CONTINUED DEDICATED EFFORTS OF ALL THE EMPLOYEES CONCERNED. ALONG THESE SAME LINES, THE CONTINUED EFFICIENT OPERATION OF THE PANAMA CANAL WILL BE GUARANTEED, SO THAT WHEN WE CONCLUDE OUR PRESENCE ON THE ISTHMUS IN THE YEAR 2000 A SAFE AND EFFICIENTLY OPERATING CANAL WILL BE THE INHERITANCE OF THE PANAMANIAN PEOPLE AND WORLD COMMERCE.

IT IS ESTIMATED THAT 3.6 BILLION DOLLARS WILL BE THE COST OF IMPLEMENTING THE TREATIES OVER THE NEXT 20 YEARS. SURELY SOME LITTLE CONSIDERATION MUST ALSO BE GIVEN TO THE EMPLOYEES WHO WILL BE REQUIRED TO PERFORM THE WORK NECESSARY TO MAKE THE TREATIES A SUCCESSFUL REALITY.

AS A FINAL CONSIDERATION, ALTHOUGH NOT DIRECTLY RELATED TO THE PROPOSED LEGISLATION, I BELIEVE THAT THE TREATY IS EITHER BEING MISINTERPRETED OR INTERPRETED IN BAD FAITH BY PANAMA. I REFER TO ARTICLE IX OF THE TREATY. "APPLICABLE LAWS AND LAW ENFORCEMENT". I WOULD LIKE TO ASK THIS COMMITTEE TO INVESTIGATE ARTICLE IX TO SEE IF IT IS BEING FULLY COMPLIED WITH.

THIS ARTICLE REFERS TO NON-PROFIT ORGANIZATIONS IN THE CANAL ZONE THAT WISH TO CONTINUE OPERATING AFTER OCTOBER 1, 1979. IT IS CLEAR FROM A READING OF THE TREATY THAT THOSE ORGANIZATIONS ARE TO ENJOY, DURING THE TRANSITION PERIOD THAT ENDS APRIL 1, 1982, THE SAME TERMS AND CONDITIONS OF OPERATION AS AT PRESENT.

IT HAS BEEN REPORTED THAT PANAMA PLANS TO CLAIM FULL AUTHORITY OVER THESE ORGANIZATIONS IMMEDIATELY AFTER ENTRY INTO FORCE OF THE TREATY ON OCTOBER 1, 1979. THE DEPARTMENT OF DEFENSE AND THE U. S. EMBASSY FULLY SUPPORT THE POSITION OF PANAMA SINCE IT WOULD MEAN THAT THEY WOULD NOT HAVE TO GRANT APO MAILING PRIVILEGES AND PX AND SALES STORE PRIVILEGES TO THESE ORGANIZATIONS. AS FAR AS I KNOW, PANAMA CANAL COMPANY OFFICIALS ARE THE ONLY ONES FIGHTING TO HONOR THE TREATY TEXT AND ITS TRUE INTENTIONS.

LET'S FACE IT, GENTLEMEN. THE TREATY WAS, AND IS, A DESTROYER OF MORALE, AND A DESTROYER OF THE INCENTIVE TO WORK. TO DENY THESE TREATY RIGHTS TO THE NON-PROFIT ORGANIZATIONS FOR THE THIRTY MONTHS TRANSITION PERIOD WOULD INDEED COMPLETE THE DESTRUCTION OF THE WORKERS MORALE, AND VIOLATE COMPLETELY THE INTENT OF THE TREATY.

MR. CHAIRMAN, I HAVE SUBMITTED AS AN ATTACHMENT TO THIS STATEMENT THE SPECIFIC LANGUAGE THAT MAY BE USED TO AMEND EITHER H. R. 1716 OR H. R. 111, OR BOTH, TO PROVIDE FOR THESE LABOR GUARANTEES AND INCENTIVES. I HAVE DISCUSSED THESE AMENDMENTS WITH BOTH THE STATE DEPARTMENT AND THE OFFICE OF THE SECRETARY OF THE ARMY AND HAVE BEEN ADVISED THAT NEITHER OFFICE WOULD OBJECT TO THE INCLUSION OF SUCH AMENDMENTS IN THE FINAL BILL. AS OCTOBER 1, 1979, TREATY EFFECTIVE DAY DRAWS NEARER AND THE CONFUSION SURROUNDING TREATY IMPLEMENTATION DIES DOWN BOTH OF THESE PARTIES REALIZE THAT THE PRESENT SKILLED WORK FORCE IS ABSOLUTELY NECESSARY. THEREFORE, IT IS MOST ADVISABLE TO IMPLEMENT MORE LIBERAL PROVISIONS TO RETAIN THE SKILLS AND EXPERTISE OF THE EMPLOYEES THAT NOW KEEP THE CANAL OPERATING AND TO PROVIDE REAL INCENTIVES TO THOSE KEY PERSONNEL WE WILL BE REQUIRED TO HIRE IN THE FUTURE YEARS. LOCAL 14, AFGE IS REQUESTING THAT PAGES 31, 32, 33, 37, 39, 41 AND 44 OF H. R. 1716 BE REPLACED WITH THE ENCLOSED ATTACHMENTS.

YOUR COMMITTEE HAS ASKED FOR MY COMMENTS ON THE BILLS, AND I HAVE GIVEN THEM TO YOU. HOWEVER, I WOULD ALSO LIKE TO OFFER SOME ADVICE. IF YOU WANT TO KEEP THE CANAL OPERATING AS A MARVEL OF AMERICAN KNOW-HOW, AS AN INTERNATIONAL SHOWCASE OF AMERICANS WORKING SIDE BY SIDE WITH PANAMANIAN, THEN MAKE THE NECESSARY PROVISIONS, TO KEEP THE EMPLOYEES ON THE ISTHMUS SO THAT THEY CAN WILLINGLY PASS ON THEIR KNOWLEDGE TO THE PEOPLE OF PANAMA. IN TERMS OF THE COST INVOLVED, THESE SUGGESTIONS ARE NOMINAL. IN TERMS OF WORTH TO THE CANAL ORGANIZATION, U. S. PRESTIGE AND WORLD COMMERCE THEN THEY ARE INVALUABLE.

1 Section 305. Section 144 of title 2 of the Panama
2 Canal Code is amended by deleting subsection (d) thereof.
3 Section 146 is amended to read as follows:

4 "Sec. Recruitment and retention remuneration.

5 (a) In addition to basic compensation and tropical differential,
6 and additional remuneration in such amounts as the head
7 of the department concerned determines, may be
8 paid as overseas recruitment and retention differentials
9 to the following categories of individuals
10 if, in the judgment of the head of the department
11 concerned, the recruitment and retention of such
12 employees is essential --

13 (1) persons employed by the Panama Canal
14 Company, Canal Zone Government or a department
15 in the Canal Zone prior to the effective date;

16 (2) persons thereafter recruited outside of
17 Panama for a position in the Republic of Panama;
18 and

19 (3) Medical doctors and dentist employed by the Department
20 of Defense or Panama Canal Commission.

21 (b) Employees who fall into more than one
22 of the three categories described in subsection

23 (a) of this section may qualify for additional
24 remuneration under only one of those categories.

(c) Additional remuneration prescribed under this section may exceed 25 percent of the rate of basic compensation for the same or similar work performed in the continental United States by employees of the Government of the United States."

Section 306. (a) Title 2 of the Panama Canal Code is amended by adding a new section 147 to read as follows:

"Sec. 147. Transfer of Federal Employees to Panama Canal Commission. The head of any Federal agency, including the United States Postal Service, is authorized to enter into agreements for the transfer or detail of that agency's employees, serving under permanent appointment, to the Panama Canal Commission. Under regulations prescribed by the Office of Personnel Management, any employee so transferred or detailed shall, upon completion of his tour of duty with the Commission, be entitled to reemployment with the agency from which he was transferred or detailed without loss of pay, seniority or other rights or benefits to which he would have been entitled had he remained on the rolls of that agency."

(b) Section 148 of title 2 of the Panama Canal Code is amended by--

1 (1) changing the parenthetical citation
2 "(5 U.S.C., sec. 2091 et seq.)" in paragraph
3 (1) to read "(5 U.S.C. §§ 8701 et seq.)";

4 (2) changing the parenthetical citation
5 "(5U.S.C., sec. 751 et seq.)" in paragraph
6 (2) to read "(5 U.S.C. §§ 8101 et seq.)";

7 (3) changing the parenthetical citation
8 "(5 U.S.C., sec. 2251 et seq.)" in paragraph
9 (4) to read "(5 U.S.C. §§ 8331 et seq.)"; and

10 (4) revising the unindented portion of the
11 section following paragraph (6) to read as follows:

12 "...the basic compensation of each employee
13 shall include the rate of basic
14 compensation established for his position,
15 and, where appropriate, the amount of overseas
16 recruitment and retention differentials,
17 determined in the manner respectively provided
18 by sections 144 and 146 of this title."

19 Section 307. Section 149 of title 2 of the Panama
20 Canal Code is amended to read as follows:

21 "Sec. 149. Merit and Other Employment Requirements.

22 (a) Subject to this subchapter, the President may,
23 from time to time and taking into account any
24 recommendation of the Panama Canal Commission, and
25 after appropriate coordination with labor organizations
26 under collective bargaining procedures established by the
27 Panama Canal treaty of 1977,

1 Wage rates; wage bases and wage formulas; tropical differential;
2 premium pay and night differential; reinstatement and restoration rights;
3 injury and death compensation benefits; leave and travel; except as
4 modified to provide equity with other employees within the agency to
5 which the employee is transferred; transportation and repatriation
6 benefits; group health and life insurance; reduction-in-force rights;
7 an employee grievance system; and the right to appeal adverse and
8 disciplinary actions as well as position classification actions;
9 veteran's preference eligibility; holidays; saved pay provisions; and
10 severance pay benefits; and sabbatical leave. Educators employed by the
11 Canal Zone will be allowed the option to purchase retirement credit in
12 their current U.S. Civil Service Retirement plan for up to ten years of
13 previous service in public schools other than Canal Zone. Railroad employees
14 will be allowed to include as creditable service for purposes of the Civil
15 Service retirement system certain periods of service by individuals before the
16 date they were employed by the Panama Canal Company or the Panama Railroad
17 Company. Eligible employees will continue to have access to health care
18 services from Department of Defence facilities where credential requirements
19 shall conform to United States standards of certification for health care
20 practices.

21 Section 322. Title 2 of the Panama Canal Code is amended by adding a new
22 section 203 to read as follows:

23 "Sec. 203. Placement. (a) A United States citizen who, immediately
24 preceding the effective date of exchange of instruments of ratification of
25 the Panama Canal Treaty of 1977, was an employee of the Panama Canal Company
26 or Canal Zone Government, who separates or is scheduled to separate on that date
27 or thereafter in accordance with the program established under subsection
28 (c) of this section

1 who request placement assistance under this
2 section."

3 Section 323. Title 2 of the Panama Canal Code is
4 amended by adding a new section 204 to read as follows:

5 "Sec. 204. Educational travel benefits.

6 Dependents of United States citizen employees of
7 the Panama Canal Commission or a department in the Canal Zone
8 who are eligible for educational travel benefits shall
9 be entitled to one round trip per year for undergraduate
10 studies in the United States until they reach their 23rd
11 birthday."

12 Section 324. Adjustment of compensation. United
13 States citizen employees of the Panama Canal Commission
14 shall be paid an allowance in addition to the tropical
15 differential to offset the increased cost of living
16 that may result after the date of entry into force
17 of the Panama Canal Treaty of 1977. The amount of the
18 additional compensation shall be determined by the
19 Panama Canal Commission.

20 Section 325. Early Retirement Eligibility.

21 Section 8336 of title 5 of the United States Code
22 is amended:

1 completing 20 years of service;

2 (2) voluntarily, after completing 25 years
3 of service or after becoming age 50 and completing
4 20 years of service; or

5 (3) involuntarily, as a result of the imple-
6 mentation of the Panama Canal Treaty of 1977 or
7 related agreements, except by removal for cause
8 on charges of misconduct or delinquency, or
9 voluntarily within 2 years prior to meeting the
10 age and/or service requirements in paragraph (2)
11 is entitled to an annuity if he--

12 (A) was employed by the Canal Zone Government,
13 Panama Canal Company or an Executive Department immediately
14 prior to the effective date of exchange of instruments
15 of ratification or entry into force of the
16 Panama Canal Treaty of 1977; and

17 (B) has been continuously employed by
18 the Panama Canal Commission or by an Executive
19 agency conducting operations in the Canal Zone
20 or the Republic of Panama since
21 the effective date of exchange of instruments
22 of ratification of the Panama Canal Treaty
23 of 1977 or its entry into force."

1 "(n) The annuity of an employee retiring under
2 this subchapter who was employed by the Panama
3 Canal Company or Canal Zone Government immediately
4 prior to the entry into force of the Panama Canal
5 Treaty of 1977, who continues in employment with
6 the Panama Canal Commission, or with another Executive
7 agency or the Smithsonian Institution, in
8 the Republic of Panama is computed with respect
9 to the period of that service performed on a
10 continuous basis after the entry into force of
11 the Panama Canal Treaty of 1977 by multiplying--

12 (A) 3 percent of the employee's
13 highest annual pay by so much of such service as
14 does not exceed 20 years; plus

15 (B) 2 percent of the employee's highest annual
16 pay multiplied by so much of such service as
17 exceeds 20 years."

18 "(o) The annuity computed under subsection
19 (n) of this section for an employee who was employed
20 as a law enforcement officer or firefighter
21 shall be increased by \$8 for each full month of
22 such service in the Republic of Panama after the
23 entry into force of the Panama Canal Treaty of
24 1977. This increase in annuity shall not be paid
25 with respect to service performed after completion

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Affiliated with AFL-CIO

1325 Massachusetts Avenue, N.W., Washington, D. C. 20005



STATEMENT OF KENNETH T. BLAYLOCK, NATIONAL PRESIDENT
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, BEFORE THE
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES COMMITTEE ON
H.R. 1716 AND H.R. 111, TO IMPLEMENT THE PANAMA CANAL TREATIES

PANAMA CANAL ZONE**FEBRUARY 24, 1979**

I appreciate the opportunity to have my statement entered before your Committee in connection with two Bills: H.R. 111 and H.R. 1716, both of which are concerned with implementing the Treaties of the United States, 1977, with the Republic of Panama.

Because that is the purpose of both these Bills, I should like to review with you the terms of the Treaties, insofar as they affect employee rights and labor-management relations, and, concurrently, the provisions of Public Law 95-454, enacted October 13, 1978, which altered some of the rights and duties of all Federal employees and instituted a statutory basis for Labor Management Relations in the Federal Service. Both the Treaties and P.L. 95-454 are pertinent to those provisions of these two Bills which concern employment and labor-management relations.

In Bill H.R. 111, all of Chapter 3, including all Subchapters I through VII are affected. In Bill H.R. 1716, all of Title III, including Chapter I and Chapter 2, are directly implicated in the provisions of both the Treaties and P.L. 95-454.

For the sake of simplicity, I should like to begin with the discussion of P.L. 95-454 and, having examined its relevance to employment practices and labor-management relations, proceed to the Treaties themselves.

P.L. 95-454, "Civil Service Reform Act of 1978"

The enactment of P.L. 95-454 on October 13, 1978, when President Carter signed this legislation, fundamentally altered the status, rights and duties of Federal employees, established new institutions to safeguard and implement these and, finally, provided a statutory basis for labor-management relations.

In establishing these new purposes, the Congress provided two definitions of "agency" in P.L. 95-454, the first appearing in Section 2302 (a) (2) (C) and the second appearing in Section 7103 (a) (3). It is the latter definition which concerns us in the area of labor-management affairs. (I attach as Annex I a reproduction of the passages which I shall discuss hereunder.)

Under that latter definition, it appears to us clear that all present employees of the Canal Company and Government as well as all employees of all Federal departments or agencies in the Canal Zone now and later, under the Treaties in the area of Panama "made available to the United States," are entitled to the benefit of the provisions of Title VII of P.L. 95-454, unless specifically excluded by that law.

The governing provision affecting these employees specifically is that all the Federal employees are entitled to Title VII excepting, and I quote, the following:

"7103 (2) (B) (i) an alien or noncitizen of the United States who occupies a position outside the United States."

Other exclusions, not at issue here in either Bill H.R. 111 or H.R. 1716, are "members of the uniformed services," "supervisors and managers," and "foreign service" personnel of the Department of State, the Agency for International Development and the International Communication Agency.

Under these definitions, it is clear that all United States citizen employees of the Company, Government, and of all other Federal agencies in the Canal Zone are now already under Title VII which governs labor-management affairs. Consequently, the Order issued by the Secretary of the Army regulating labor-management relations no longer had legal validity, from the effective date of P.L. 95-454, which was January 11, 1979 since it had been superseded by Title VII.

It could be contended, though we ourselves are not here pressing the point, that all alien employees (that is, persons not United States citizens) also come under Title VII, for the interim period while the Treaties are not yet in force, on the claim that the Canal Zone is United States territory until sovereignty passes to the Republic of Panama.

Whatever the status of employees who are not United States citizens, however, it is manifest and uncontestable that all United States citizen employees are now under Title VII and, unless P.L. 95-454 is set aside, shall remain under Title VII following the date when the territory comes under Panamanian sovereignty by action of the Treaties of 1977.

For these reasons, basing our views on P.L. 95-454, we are opposed to the provisions of Subchapter VII of Bill H.R. 111, and Section 142 (c) of Bill H.R. 1716, both of which are designed solely to deprive United States citizens of employee rights enjoyed by all other United States citizen employees of similar classification located anywhere else in the world, including every other foreign country.

Certainly, the undertakings made by the Administration when seeking Senatorial advice and consent did not suggest that there would be such outright discrimination practices against American citizens, solely, for working in this area when all other American citizens, who are not uniformed personnel or who are not in the foreign service, are entitled to the protections of Title VII, no matter where they work.

The American Federation of Government Employees, AFL-CIO, has discussed the provisions of Title VII in hundreds of hours of meetings with Executive Branch and Legislative Branch officers and employees. At no time was there any reservation or stipulation expressed in any of these meetings regarding the non-applicability of Title VII to United States citizens located in the Canal Zone or in Panama.

We would consider any effort to deprive these United States citizen employees of the rights for which they have waited so long and which they now enjoy as a breach of faith by this Administration.

There are other arguments, equally weighty, which I should like to adduce under the provisions, of the 1977 Treaties.

Provisions of the Treaties Regarding Employment

The Treaties of 1977 make a clear distinction between the rights of United States citizen employees and those of Panamanian nationals working for the Canal Company/Commission. The latter are to displace the former in the course of time, thus setting up a legal discrimination in favor of one group and against another.

This circumstance confronts both management and labor with fundamental dilemmas in the area of labor-management relations. Over and above the obvious conflict of interest which resides in management and in labor in the classic management-labor relationship, resulting in the exclusion of supervisory and management employees from union representation, the Treaties inject further conflicts of interest into the unionized labor force itself, distinguishing between, and discriminating among, them on the basis of citizenship.

This conflict of interest takes two forms: legal and factual.

Legally, the Treaties require that the United States citizen employees are to be replaced by Panamanian employees over a course of time. Moreover, the remedies which U.S. citizen employees are to obtain for any losses they incur during this displacement are to be satisfied exclusively by United States authorities. On the other hand, the remedies which Panamanian national employees, who might be displaced incidental to the Treaties' operations, are to be satisfied, in some cases, by the United States

authorities and, in other cases, by the Panamanian authorities. However, these remedies are not commensurate in procedural or factual terms, creating differences in community of interest among the United States and Panamanian employees.

Procedurally, the United States citizen employees will have available all the U.S. constitutional and statutory processes, both administrative and judicial. The Panamanian citizen employees will have available only the Treaties and the support of the Panamanian government.

Factually, the Panamanian employees expect to improve their position primarily, if not exclusively, by displacing United States citizen employees in those positions which will remain available, both in matters of job retention and promotion to higher grades.

Given human strivings to advance competitively, the one set of employees perforce will be seeking to hasten this process of transition to its advantage and the other set will be seeking to retard it. This is not a community of interest. It resembles, if an analogy may be drawn from marital life, the conflict of a prospective divorce of husband and wife rather than the community of interest of the parties.

As in any situation involving conflict of interest, the safest and most rational posture is to face the facts openly. We hold that both the United States employees and the Panamanian employees should have the same rights vis-a-vis management. We

regret the Treaties do not permit them the same rights vis-a-vis each other as employees. For this reason, though most reluctantly, we bow to the situation that the Treaties do in fact purposely and radically discriminate against United States citizen employees and in favor of Panamanian national employees. To avoid misconceptions and misunderstandings in the future, we believe that it is in the best interests of all the parties at the outset to reconcile themselves to this fundamental fact and to seek to mitigate its impact insofar as the Treaties do not provide insurmountable obstacles.

We do not find rational the presumption of a situation where a minority of Panamanian employees in the same bargaining unit as a majority of United States employees can feel secure that the self-interest of the United States employees will not be prejudicial to them. Similarly, we do not find rational the presumption of the reverse situation, where a minority of United States citizen employees will feel secure that the motivations of the majority of Panamanian employees to accelerate their displacement will not exist.

Our concerns do not arise out of prejudices due to national origin. We have had no such problem in the past in the Canal Zone and we have no such problem in the United States itself in situations where the laws clearly forbid discrimination on the basis of national origin. However, the Treaties positively require this discrimination in favor of one class of nationals and against another class and we are only being realistic

to draw the objective, practical consequences of such a legal requirement to discriminate.

Because of the importance of this issue, I should like to review with you the provisions of the Treaties which are the real core of the dilemmas which I have been describing. I believe that, on the basis of this review, it will become clear that the most prudent system is to apply at the outset, two separate but equivalent and parallel systems of collective bargaining, one for all United States employees, whether they work for the Company/Commission or for other United States agencies, and one for all employees who are not United States citizens and who work either for the Company/Commission or other United States agencies.

The Limitations on the Rights of United States
Employees under the Treaties

The rights of United States employees of the Commission and of the Armed Forces are separately set out under Article III (Commission) and Article IV (Armed Forces) of the Treaty and the Implementing International Agreements drawn up in consequence of those two Articles. (Article IV is sometimes described as the "Status of Forces Article" because of the supplemental Implementing International Agreement which is based on it.)

These two Articles superficially appear to make a distinction in the rights between United States employees of the Commission and of the Armed Services. In fact, no significant distinction applies. The main difference relates to the commissary rights

of United States citizen employees of the Armed Forces and, because of these commissary rights, the eventual restriction of U.S. citizen employees of the Armed Forces to residence in locations defined as "defense sites and such other areas."

Procedurally, but not substantially, a distinction is made between these two categories of U.S. citizen employees because two separate U.S./Panamanian liaison bodies will be established for resolving personnel matters, one for the Panama Canal Commission and a separate body for the Armed Forces. All Commission personnel matters will fall within the jurisdiction of the Coordinating Committee established under Article III of the Treaty and Article II of the relevant Implementing International Agreement. All Armed Forces personnel matters will fall under the separate jurisdiction of a separate "Joint Committee," established under the Implementing International Agreement pursuant to Article IV of the Treaty. Neither of these should be allowed to impinge on the rights of labor organizations in dealing with management since these coordinating functions will relate specifically to issues of quasi-diplomatic agreements regarding management policies and not to specific labor-management agreements pursuant to policies in the area of employment incorporated in the Treaties.

The employment rights of all United States citizens are defined and limited by several other Articles of the Treaty and by several Implementing Agreements. Particularly important is Article V, "Principle of Non-Intervention," which requires that the U.S. nationals "refrain from any intervention in the

internal affairs of the Republic of Panama." These internal affairs can relate, of course, also to the conditions of employment of Panamanian nationals, to the nature and status of the Panamanian labor unions, and to Panamanian social security systems and taxation. Thus this Article places United States citizen employees in potential jeopardy if they are represented by unions whose members are subject to Panamanian law.

Particularly relevant is Paragraph 5 of Title X, requiring the periodic rotation, "at a maximum of five years, of United States citizen employees and other non-Panamanian employees, hired after the entry into force of this Treaty." The purpose of this is to assure that seniority and career ladders are not established for U.S. citizen employees to the detriment of Panamanian nationals who need not be rotated. Thus it clearly establishes a conflict of interest category based on citizenship.

Articles in the Implementing Agreements clearly show that the Status of Commission Employee Agreement (SOCEA) and the Status of Forces Agreement (SOFA) are identical in placing express limitations on the employment rights, status, and tenure of U.S. citizen employees. They are also identical for placing these employees under criminal jurisdiction of the Panamanian State in certain areas, including custody in Panamanian jails of those charged with murder, rape, robbery with violence, trafficking in drugs, or "Crimes against the security of the Panamanian State."

The Implementation Agreement to Article IV of the Treaty (Status of Forces Agreement) repeats as Article II of that Agreement the text of Article V of the Treaty regarding the Principles of Non-Intervention. Thus, the similarity of legal status of U.S. citizen employees of the Armed Forces to U.S. citizen employees of the Commission is expressly emphasized. Article VII of the Implementing Agreement to Article IV of the Treaty stipulates that the same ratio of Panamanians to total employees will apply as defined in the Panamanian law regarding foreign company operations.

I could cite additional passages in the Treaties and Implementing Agreements but I believe they would be redundant since the weight of these Texts clearly establishes that the United States citizen employees have narrowly circumscribed and limited rights.

AFGE Insists on the Maximum Rights
of Panamanian Nationals vis-a-vis Management

I want to make it absolutely clear that we are asking for the same rights to be given to the employees of Panamanian or other nationality in labor-management relations as we are asking for employees who are United States citizens. At the minimum, insofar as the Treaties themselves do not preclude these rights, they should be equivalent to Title VII of P.L. 95-454.

We would prefer more, of course. Title VII does not give any Federal employees the same rights as private enterprise employees in the United States have. But it is a great advance

over the old system of Executive Orders. At least we now have a statutory platform from which we can apply a lever to acquire rights and conditions of work through collective bargaining for Federal employees which gradually will make their status somewhat like that of private enterprise employees.

We will support totally all the unions in the AFL-CIO and, with them, will insist that Panamanian nationals who are employees either of the Commission or of the United States agencies have the same rights as United States citizen employees. We do this while at the same time noting that it is the Treaties themselves which make it impracticable in most cases for all employees, regardless of citizenship, to be in the same units in order to effectively exercise these same rights without the interjection of conflicts of interest among them.

Special Protections for Federal Employees Entitled
to Placement with Agencies in the United States

Although certain Panamanian national employees are entitled to special consideration for immigration into the United States, the Treaties do not give them any rights to guaranteed employment in the United States. At best, former employees of the Company/Commission will be placed with other United States agencies located in Panama, so far as employment rights are concerned.

United States citizen employees, on the other hand, are entitled to certain employment rights in the United States. Our concern is to assure that they will be able to enjoy these

rights in a timely fashion. Therefore, I should like to solicit your Committee's support for express legislative language they can cite when seeking to avail themselves expeditiously of these rights, especially in a potential situation where there may be cutbacks in Federal employment in the United States itself.

The rights of which I speak are not disputed by the Administration. In fact, FPM Letter 380-12, dated December 29, 1978, addresses them directly. Entitled, "Placement Assistance for Panama Canal Zone Employees," the Letter sets up certain high priorities for their assistance. I attach a reproduction of that Letter as Annex II as evidence that there is no disagreement between us and the Executive Branch regarding these placement commitments.

Our concern is that the envisioned program does not go far enough in providing a statutory basis for these rights, and that it does not provide the resources or the personnel to enforce it expeditiously. Therefore, we should like to solicit your support for an amendment to Bill H.R. 111 and/or H.R. 1716 to establish an office of the Special Counsel of the Merit Systems Protection Board located in the offices of the Company/Commission where Federal employees can have direct access to officials cognizant of their rights and able to require their enforcement.

A Suggested Amendment to H.R. 111/H.R. 1716

I should like to ask your indulgence to permit me to enter as Annex III to my statement a draft of a proposed Bill, which would establish such a procedure and office. I have had it drafted as a separate Bill but it could easily be made a part of H.R. 111 or H.R. 1716.

Basically, what the draft Bill states is that for five years any United States national who was employed by the Canal Company or Government before the entry into force of the Treaties shall be entitled preferentially to obtain employment at the same grade, career ladder and pay in the United States. The remainder of the Bill establishes and funds the machinery for carrying out this provision, locating it formally in the office of the Special Counsel of the Merit Systems Protection Board established under P.L. 95-454, portions of which I have already cited on previous occasions in this testimony.

Other Amendments

You will be receiving proposals for specific other amendments which will be presented by AFGE Local Union representatives speaking for employee units which we represent. I endorse their proposals completely and commend them to your special consideration because they are all designed to improve the efficiency and morale of the employees who will be recruited to remain in the employment of the Commission or other Federal agencies after the Treaties come into force. I shall not repeat

these petitions at this point of the Hearings, except to say that they have the complete support of our union.

Concluding Statement

I am most grateful to your Committee for accepting my statement and for your kind reception of National Vice President James Lynch and of the Presidents of the Locals who are appearing before you.

I look forward to presenting my own further testimony to you personally in Washington when you hold Hearings there.

In the meantime, I wish to assure you of the fullest cooperation of myself and my staff in your addressing the complex problems and resolving the dilemmas which now attend this implementing legislation.

Please accept my best wishes for a productive session and for a safe journey back to Washington.

SUBCHAPTER IV ADMINISTRATIVE AND OTHER PROVISIONS

Sec.

- 1181 Official time.
- 1182 Compensation.
- 1183 Consultation and publication of data.
- 1184 Regulations.
- 1185 Continuation of existing laws, regulations, agreements, and procedures.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1101. Findings and purpose

(a) The Congress finds that—

(1) experience in both private and public employment has shown that the Government has a right to expect its employees to be loyal, efficient, and productive, and to participate through labor organizations of their own choosing in decisions which affect them;

(2) it is in the public interest to—

- (A) recognize the public interest;
- (B) contribute to the effective conduct of public business; and
- (C) facilitate and encourage the amicable settlement of disputes between employees and their employers involving the Government;

(3) the public interest demands the highest standards of employee performance and the continual development and implementation of modern and progressive work practices and procedures in order to ensure the maximum efficiency and accomplishment of the operations of the Government.

Therefore, labor organizations and collective bargaining in the civil service are in the public interest. It is the policy of this chapter to specify certain rights and obligations of the employees of the Federal Government and to establish procedures which are designed to meet the special requirements and needs of the Government. The provisions of this chapter are intended to be consistent with the requirements of an effective and efficient Government.

§ 1102. Employees' rights

Each employee shall have the right to form, join, or assist any labor organization, or to refrain from any such activity, freely and without fear of reprisal or discrimination, and to participate in the activities of such organization, subject to the limitations and exceptions provided under this chapter, such right to include the right—

- (1) to act for a labor organization in the capacity of a representative and the right to be elected or appointed as a representative of the organization in the capacity of a representative of the executive branch of the Government, the Congress, or other appropriate authorities; and
- (2) to engage in collective bargaining with respect to conditions of employment, through representatives chosen by employees under this chapter.

§ 1103. Reaffirmation application

(a) For the purposes of this chapter—

- (1) "person" means an individual, labor organization, or agency;

(2) "employee" means an individual—

- (A) employed in an agency; or
- (B) who is employed in an agency but is not an employee within the meaning of section 2104 of this title, and who has not obtained any other comparable and substantially equivalent employment, as determined under regulations prescribed by the Federal Labor Relations Authority;

but not including—

- (1) an alien or non-citizen of the United States who occupies a position outside the United States;
- (2) a member of the uniformed services;
- (3) an individual who is employed by the Federal Bureau of Investigation, the Federal Reserve System, the United States employed in the Department of State, the Agency for International Development, or the International Development Administration;

(4) any person who participates in a strike in violation of section 2105 of this title;

(5) "agency" means an Executive agency (including a agency established by the President or the President pro tempore of this title and the Veterans' Affairs Service, Veterans' Administration, the Library of Congress, and the Government Printing Office), but does not include—

- (A) the Federal Bureau of Investigation;
- (B) the Federal Reserve System;
- (C) the Central Intelligence Agency;
- (D) the National Security Agency;
- (E) the National Security Council;
- (F) the Federal Labor Relations Authority;

or

- (1) the Federal Service Impasses Panel;
- (2) any other agency or organization composed in whole or in part of employees in which employees participate and pay dues, and which has as a purpose the dealing with an agency concerning grievance and conditions of employment, but does not include—

- (A) an organization which, by its constitution, bylaws, membership because of race, creed, color, national origin, sex, marital status, or religion, or by its purpose, is organized on the basis of race, creed, color, national origin, sex, marital status, or religion;
- (B) an organization which advocates the overthrow of the constitutional form of government of the United States;
- (C) an organization which advocates the overthrow of the Government of the United States;
- (D) an organization which participates in the conduct of a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such strike;
- (E) "short-term dues, fees, and assessments";

(6) "Authority" means the Federal Labor Relations Authority described in section 2104(c) of this title; the Federal Service Impasses Panel described in section 2104(c) of this title; and the National Labor Relations Board described in section 2104(c) of this title;

(7) "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of this chapter;

Federal Personnel Manual System**FPM Letter 330-12**Published in advance
of incorporation in FPM
Chapter 330**RETAIN UNTIL SUPERSEDED****SUBJECT:** Placement Assistance for Panama Canal Zone Employees

Washington, D. C. 20415

December 29, 1978

Heads of Departments and Independent Establishments:

Background

1. The Panama Canal Treaty of 1977 states that it is the policy of the United States Government that U.S. citizens who were employed by the Panama Canal Company or Canal Zone Government prior to entry into force of the Treaty and who are displaced from employment as a direct result of implementation of the Treaty will be provided maximum possible placement assistance. Similar placement assistance will also be provided to employees of other U.S. Government agencies in the Canal Zone who are involuntarily separated as a result of treaty implementation. In addition, special placement assistance will be extended to U.S. citizen employees of the Panama Canal Company or Canal Zone Government who desire other Federal employment in the United States.

2. In carrying out these provisions of the Treaty and national policy, the Civil Service Commission (CSC)/Office of Personnel Management (OPM) is charged with the responsibility for developing and administering a Federal Government-wide placement program for all eligible employees who request placement assistance. The purpose of this letter, therefore, is to explain the placement assistance program which the CSC/OPM has developed. The hiring restrictions outlined in this letter generally become effective April 1, 1979, and specifically when an area office informs agencies that Canal Zone employees are available for employment for positions agencies wish to fill.

Placement Priority Levels

3. Two priority levels of employment consideration have been established. Priority level 1 consists of those U.S. citizen employees of the Panama Canal Company, the Canal Zone Government, and other Federal agencies in the Canal Zone who are involuntarily separated as a direct result of the Treaty. Priority level 2 consists of U.S. citizen employees of the Panama Canal Company or Canal Zone Government who wish to obtain other Federal employment in the United States even though they are not scheduled for separation. With certain exceptions, agencies will not be able to fill positions by any means when priority level 1 employees are qualified and available. When priority level 2 employees are qualified and available, agencies will not be permitted to fill positions by appointments from outside the agency (see paragraph 8 below).

Waiver of Service Requirement

4. Sections 6-2 and 6-3 of FPM chapter 315 provide that Canal Zone employees must have at least 1 year of service under the Canal Zone merit system to be eligible for noncompetitive transfer or reinstatement. The CSC/OPM has waived this requirement for the noncompetitive transfer or reinstatement of Canal Zone employees who are eligible for the special placement assistance program explained in this letter.

Registration of Canal Zone Employees

5. Priority level 1 employees will be permitted to register throughout the life of the Panama Canal Treaty of 1977 for the CSC's/OPM's special placement assistance program at any time from the receipt of their separation notices until 90 days after the effective date of separation. To be

Inquiries: Staffing Resources Division, BRE, 632-4533**CSC Code:** 330, Recruitment, Selection, and Placement (General)**Distribution:** FPM

eligible for registration, employees must meet one of the following conditions: (1) be in tenure group I or II in the competitive service; (2) be in the excepted service and have competitive status; or (3) be in tenure group I or II in the Canal Zone merit system or its successor.

6. In order to register for placement assistance, two copies of the modified Displaced Employee Registration Form shown in the attachment to this letter and two copies of Standard Form 171 will be completed jointly by the agency personnel office and the employee. Agencies in the Canal Zone are responsible for duplicating their own supply of the registration forms. Employees will be permitted to register for up to five occupational categories for which they qualify, at the grade from which they were separated and all other lower grades which they are willing to accept. Employees currently occupying positions at grade GS-16 and above or equivalent will be permitted to register only at grades GS-15 and below or equivalent. They may register for any two civil service regions or for one region and Washington, D.C. In certain cases where an employee is having unusual difficulties locating employment, the CSC/OPM may permit registration in additional locations. Employees may remain in the program for up to 1 year from the date of their registration or separation, whichever is later, but will be removed sooner if they are placed in a continuing Federal position or if they decline an offer which they indicated they would accept. Employees who decline an equivalent offer to their current position made by an agency located in the Canal Zone may not be given priority level 1 consideration although they may still be eligible for priority level 2 consideration if they meet the requirements.

7. Priority level 2 employees are permitted to register for placement assistance any time within 5 years after April 1, 1979. In other respects, registration, eligibility and duration will be the same as for priority level 1 employees.

Referral of Employees

8. CSC/OPM area offices will periodically publish a list of series and grades for which priority level 1 and priority level 2 employees have registered. As previously stated, agencies may not fill positions in the competitive service by any means in a series in which priority level 1 employees are registered, except that this restriction does not apply to: (1) career promotions and similar actions; (2) actions involving exercise of reemployment rights; (3) reassignment of employees subject to downgrading caused by reclassification because of error or classification standards change; (4) reassignment of employees found physically disabled for current positions; (5) repromotion of employees involuntarily downgraded without personal cause; (6) reassignment or demotion of employees to satisfy reduction-in-force rights; and (7) reassignment, demotion, transfer or reinstatement of employees scheduled for separation by reduction in force, major reorganization, or employees scheduled for separation or separated after declining to transfer with their functions outside the commuting area. The referral of a priority level 2 employee only restricts the agency from filling a vacancy by appointment from a civil service register, transfer, or reinstatement, (other than reinstatement or transfer of a Federal employee through an established agency priority placement program). It does not affect the filling of a vacancy by internal actions as is the case for priority level 1 employees.

9. When an agency has a vacancy (not including GS-16 and above) which is expected to last more than 1 year in a series for which priority level 1 and/or priority level 2 employees are available, it must contact the CSC's/OPM's area office from which it received the list and request referrals. Employees will be referred at the grade of the vacancy and all grades above that grade up to the full performance grade. For example, if an agency has a GS-9 vacancy which has a full performance level of GS-11, employees at grades 9 to 11 will be referred. If the only referral is at GS-11, the agency must either hire that employee at that grade or not fill the position. For those positions in a formal training, intern, or apprentice program or formally identified as trainee positions, displaced employees will be referred only at the grade of the position and not at higher grades. Employees who already have obtained the knowledge and skills which they would acquire from the training will not be referred for trainee vacancies. For purposes of this paragraph, positions will be considered to be trainee positions only if the requirements in section 7-6 of FPM chapter 351 are met. Thus, for example, although most GS-5 professional positions are, by their nature, trainee positions, they are not automatically considered as such as the term is used here.

10. In addition to referring priority level 1 and priority level 2 Canal Zone employees, the CSC/OPM area offices will also refer other employees in the regular Displaced Employee Program. In these cases, the displaced employees and the Canal Zone employees will be treated the same and the priority level 1 restrictions on agency hiring will automatically go into effect. Displaced employees will not receive this higher degree of consideration for series for which no Canal Zone employees are registered.

Objections to Referrals

11. Agencies wishing to object to a Canal Zone referral may do so only if he/she does not meet the qualifications standards published by the CSC/OPM or selective factors approved by the area office.

Exception to Merit Promotion

12. The placement of Canal Zone referrals in positions with known promotion potential is permitted as an exception to merit promotion, and agencies cannot require competition.

Eligibility of Canal Zone Employees for the Displaced Employee Program

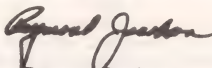
13. Those priority level 1 employees who would normally have 2 years of eligibility for the Displaced Employee Program will be permitted to remain in that program for 1 year after their year of eligibility under the special placement program outlined in this letter has expired. However, if they are removed from the special placement program before their year has expired, they will not be permitted to be in the Displaced Employee Program. Unlike priority level 1 employees, priority level 2 employees are not eligible for enrollment in the CSC's/OPM's Displaced Employee Program unless, of course, a future action changes their status.

Contacting Canal Zone Employees

14. Agencies which need assistance in contacting Canal Zone employees may call the Panama Canal Office in Washington, D.C., telephone 202-724-0104.

Summary

15. We recognize that the hiring restrictions described above will greatly reduce agencies' flexibilities and may result in some operating difficulties. However, these restrictions are consistent with Presidential and congressional commitment to assist Canal Zone employees. We know that we will be able to count on your full support in this important effort.



Raymond Jacobson
Executive Director

Attachment

DRAFT

Sample Copy of Modified Registration Sheet *
(Displaced Employee Program—Panama Canal Zone)

UNITED STATES CIVIL SERVICE COMMISSION Displaced Employee Program—Panama Canal Zone MODIFIED REGISTRATION SHEET		FOR COMMISSION USE ONLY		Expiration Date: _____				
1. <u>NAME AND ADDRESS OF REGISTERING OFFICE</u>			2. <u>DATE OF REGISTRATION</u>					
3. <u>NAME OF REGISTRANT</u>		(Last)		(First) (Middle)				
4. <u>ADDRESS</u>		(Street)		(City) (State) (Zip Code)				
5. <u>SOCIAL SECURITY NO.</u>		6. <u>TENURE GROUP</u>		7. <u>DATES:</u>				
		<input type="checkbox"/> 1A <input type="checkbox"/> 2A <input type="checkbox"/> 1B <input type="checkbox"/> 2B		SCD-RIF _____ Advance Notice _____ Separation _____				
8. <u>SEX</u>		9. <u>ACADEMIC EDUCATION LEVEL</u>						
<input type="checkbox"/> Male <input type="checkbox"/> Female								
10. <u>SKILLS</u>								
	Pay Plan	Occupational Series					Present Grade	Low Grade
PRESENT SKILL	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SKILL 2	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SKILL 3	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SKILL 4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
SKILL 5	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. <u>GEOGRAPHIC AVAILABILITY</u> —Use blank space at right to express geographic availability in specific terms. If available in more than one region, so specify. Specify State or States, or major metropolitan areas within all regions where employee is available for appointment.								
12. <u>REASON FOR REGISTRATION</u>				13. I certify that the above-named employee is entitled to				
<input type="checkbox"/> Reduction in Force <input type="checkbox"/> Declined Relocation <input type="checkbox"/> Desire to Leave Canal Zone				<input type="checkbox"/> Priority Level 1 <input type="checkbox"/> Priority Level 2				
				Appointing Officer _____ Date _____				

*Upon approval of this procedure, SKE will take the necessary steps to arrange for printing of this form according to established criteria.

INSTRUCTIONS FOR COMPLETING MODIFIED REGISTRATION SHEET

General

All items on the registration sheet are to be completed. Most of these items are self-explanatory. Items on which some further explanation may be needed are discussed below.

Explanation of Registration Sheet Items

1. Name and address of registering office. The registering office is the personnel office of the agency activity from which the employee has been, or is to be, displaced.
 2. Date of registration. Enter the date the registration sheet is prepared.
 6. Tenure group. Check applicable box to show the employee's retention standing for reduction-in-force.
 7. Dates. Enter employee's service computation date for reduction-in-force purposes.
 9. Academic education level. Enter one of the following phrases, as appropriate: No high school; High school, not graduate; High school graduate; High school certificate of equivalency; Terminal occupational program, incomplete; Terminal occupational program, complete; College less than 1 year; 1 year college; 2 years college; College associate degree; 3 years college; 4 years college, no degree; Bachelor's degree; Bachelor's degree +; First professional degree; First professional degree +; Master's degree; Master's degree +; Sixth-year degree; Sixth-year degree +; Doctorate degree; Doctorate degree +.
 10. Skills. Provision is made for registering the employee in his present skill and in as many as four additional skills for which he meets appropriate qualification standards. Register him under "Present Skill" only if he still has the abilities and skills required to perform the duties of the position in which he last served. If an employee has fewer than four additional skills, register him for those which he has, leaving the remaining boxes blank. If he has more than four additional skills, register him for the four most likely to provide him with placement opportunities at or near his present grade level.
- Pay plan. For each skill in which the employee is registered, enter the appropriate pay plan symbol (GS, WG, WL, WS).
- Occupational series. The employee's present skill is represented by the occupational series that includes the position he holds or last held. Similarly, skills 2 to 5 are expressed in terms of an occupational series for which the employee meets applicable qualification standards. The codes and definitions in the Handbook of Blue Collar Occupational Families and Series are used to identify blue-collar jobs; the first two digits represent the job family, the next two or three digits designate the series. The appropriate series in the Handbook of Occupational Groups and Series of Classes are used to identify General Schedule positions. The applicable series designation always should be preceded, if necessary, by enough zeros to fill the five boxes allotted.
- Present grade. When a present skill is shown, enter the actual grade held by all General Schedule employees; for wage system employees convert the grade held to the corresponding grade under the Federal Wage System. (See FPM Supplement 532-1, Federal Wage System.) For skills 2 to 5, enter the employee's present grade provided he meets applicable qualification standards for the particular skill; otherwise, enter the highest grade for which he qualifies in that skill.

Low grade. Enter the lowest grade which the employee indicates he will accept.

Examples of skills coding: (1) A General Supply Officer GS-2001-12 is coded as: Pay Plan—GS, Occupational Series—02001, Present Grade—12; (2) A Mobile Equivalent Servicer W-58-72-05 is coded as: Pay Plan—WG, Occupational Series—58072, Present Grade—5.

Geographic availability. Care should be taken to indicate geographic availability in specific terms. Do not indicate availability throughout a particular area unless the employee is in fact available for appointment throughout the area. A registrant who declines an employment opportunity in a locality where he had previously indicated availability is no longer eligible for placement assistance under the program.

13. Appointing Officer. This item must be completed by the appointing officer who should clearly indicate the priority level to which the registrant is entitled. The appointing officer must then sign the form and print or type his or her name and title. Failure to do so will invalidate the registration.

Annex III

DRAFT BILL

To provide that United States nationals employed by the Panama Canal Company or Canal Zone Government shall be entitled to be placed in civil service positions, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

That (a) any United States national employed by the Panama Canal Company or Canal Zone Government before the entry into force of the Panama Canal Treaty shall, during the 5-year period beginning on the date of the enactment of this Act, be entitled, upon request or upon termination of employment with the Panama Canal Company, the Canal Zone Government, or the Panama Canal Commission to be placed in a position in the competitive service or a position in the Senior Executive Service held by a career appointee in any Executive agency (within the meaning of section 105 of title 5, United States Code).

(b) Any individual entitled to be placed in a position under subsection (a) shall be placed in a position--

(1) having the same grade and pay, and

(2) having the same duties and responsibilities and, to the maximum extent feasible, the same qualification requirements,

as the position held by such individual before being placed under this section.

(c) Notwithstanding any other provision of law, an individual entitled to be placed in a position under subsection (a) shall be

Annex III (Draft Bill Continued)

granted preference in placement in any position over any other individual granted any other preference or advantage under any other provision of law.

Sec. 2. (a) (1) The Special Counsel of the Merit Systems Protection Board shall establish a separate office to receive and investigate complaints from any individual with respect to placement in a position to which he is entitled under subsection (a) of the first section of this Act.

(2) The office established under paragraph (1) shall--

(A) be located in an area which is made available to the United States by the Republic of Panama under the Panama Canal Treaty or any agreement with respect thereto and which is accessible to individuals affected by this Act, and

(B) be composed of--

(i) 2 attorneys who shall be paid at a rate of pay not in excess of the maximum rate of pay for GS-15 of the General Schedule,

(ii) an administrative assistant, and

(iii) 3 clerical personnel.

(b) (1) If, after any investigation under subsection (a), the office determines that--

(A) an individual entitled to be placed in a position under the first section of this Act was not so placed, or

(B) an individual was placed in a position which does not meet the requirements of subsection (b) of such first section,

the office shall report its determinations to the Special Counsel.

Annex III (Draft Bill Continued)

(2) If the Special Counsel concurs in the determination made by the office, the Special Counsel shall refer the matter to the Merit Systems Protection Board and shall notify the Congress of such referral.

(3) If the Board concurs in the determination, it shall order the Office of Personnel Management to place the individual in an appropriate position.

(c) (1) The office shall report each quarter to the Comptroller General of the United States, and arrange for an audit of the office before the close of the first year in which it is in operation.

(2) The Comptroller General shall, after the audit conducted under paragraph (1), report to the Congress with its recommendations with respect to the staff and other needs of the office.

Sec. 3. There is authorized to be appropriated, without fiscal year limitation, the sum of 2 million dollars to carry out the purposes of this Act, except that not more than 650,000 dollars may be expended in the first fiscal year in which such money is made available.



LOCAL No. 14 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Affiliated with the AFL-CIO—The Granddaddy of Canal Zone Locals

Serving Federal Employees at the Crossroads of the World

Chartered October 9, 1932

Box 1703
Balboa, Canal Zone

STATEMENT OF JAMES J. O'DONNELL, PRESIDENT OF LOCAL 14 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES BEFORE THE MERCHANT MARINE AND FISHERIES COMMITTEE ON H.R. 1716 AND H.R. 111 TO IMPLEMENT THE PANAMA CANAL TREATIES.

I am James J. O'Donnell, president of Local 14, AFGE and I am pleased to have this opportunity to appear before your committee and to present the following testimony. Perhaps the message of widespread employee frustration at the continuing lack of a firm framework of reference on living and working conditions on which to plan their futures has been an underlying theme in the testimony thus far. This frustration and insecurity is pervasive and runs through all layers of management and workers with the same uncertainties nagging at the highest level managers and professionals to the lowest graded laborer.

Gentlemen, the threat to our security which we face has created a climate thick with concern and demotivating in the most classic sense of behavioral psychology. The hygienic motivating hierarchies or factors mentioned by Maslow and others are now at the lowest level and I fear we have now a crisis in motivation, a crisis in behavior that can best be described as explosive; where the same elements of strength and loyalty that have clearly established the Canal workforce as a proud model of dedication and efficiency may be spontaneously precipitated in the opposite direction in a final attempt to secure self preservation.

The scenario unfolding before us is clearly one of traumatic change without any accompanying guarantees of security. By the beginning of May nearly 7 out of every 10 employees will have received notification of a transfer or a reduction in force. The vast majority of the workforce will have tangible evidence

We do in unity that which is impossible in disunity

of the effect on their livelihoods without anything but empty promises that they will be protected. At the same time, we also face major changes in life style and conditions such as legal jurisdiction, schooling, medical care and logistical support to name but a few. The future looms as one large elusive series of threatening actions which are vast and overwhelming.

Now you might be thinking, we've heard this before, and isn't this overstating the case? I think not and I have tried to analyze some data which may quantifiably indicate this underlying rapid deterioration of this model work force. Specifically, I will present data on employee safety, ship accidents and disciplinary actions as evidence of the deep-seated breakdown in employee motivation and morale, and dispel the mistaken interpretation of employee silence and continued efforts on the job as acquiescence, acceptance or resignation to their fates as fodder to feed the treaties. Admittedly, each of these indicators is composed of multiple factors; however, a definite and identifiable trend exists which will allow you to draw your own conclusions as to the quantifiable severity of extant problem and the need for genuine equitable solutions as a matter of high priority.

EMPLOYEE SAFETY:

The Accident Frequency Rate involving disabling injuries throughout the Panama Canal Company/Canal Zone Government has

shown a dramatic increase of 57% from FY 77 to FY 78. Individual bureaus have experienced increases in disabling injuries of as much as 100% for this period. With all factors being the same, one might justifiably conclude that the drastic increase in accidents is a direct reflection of the pressures of insecurity on all employees. When one looks at individual divisions, one finds that of the ten divisions exceeding the Company/Government average Accident Frequency Rate; that the five highest accident rates are being experienced by units which either will cease to exist on 1 October 1979 or thirty months thereafter. For instance, the Marine Bunkering Division, which leads the list in disabling injuries, is experiencing an Accident Frequency Rate over 3.5 times that of the increased Company/Government average and 6 times that of the Company/Government average in FY 77.

SHIP ACCIDENTS:

The frequency of accidents involving transiting ships shows the same alarming trend. In FY 75 there was one accident for every 540 oceangoing transits. In FY 78 the frequency has increased over 95% to one accident for every 278 oceangoing transits. Approximately two-thirds of the accidents involve employee-related fault. For the same period the average damage cost per accident has climbed 36%, from \$70K to \$95.4K, and total damage amounted to nearly \$5.5 million in FY 78.

DISCIPLINARY ACTIONS:

Employees receiving suspensions or reprimands is another factor which is indicative of overall employee motivation and which we see clear signs of deterioration. In FY 77, 548 disciplinary actions were taken within the workforce. In FY 78 this number increases to 700 - an increase of nearly 28% - with the increase in suspensions increasing nearly 40% during this same period.

Gentlemen, I stipulate that from these indicators of employee frame of mind we have clear and quantifiable evidence of serious deterioration which unless checked by providing an immediate and concrete assurance of living and working conditions will reach epidemic and catastrophic proportions.

Other less quantifiable, but nonetheless observable indicators, such as pilferage, absenteeism, alcoholism and psychotic behavior further confirms the critical breakdown in the traditional tough fiber of this workforce. I believe we are rapidly approaching, if indeed we have not already reached, a point where any precipitant could cause a spontaneous collapse of the workforce. The implications are quite dire whether the collapse manifests itself as a work slowdown or stoppage or even willful damage to the operating machinery, but the fact remains the population shows clearly demonstrable signs of overstress, behavioral instability which has been engendered and nourished by change and insecurity without any

concrete stabilizing conditions to mitigate the trauma of change which to date has stricken at the very heart of the motivation, morale and security of the population.

Unrelenting and unchecked frustration is unpredictable and often irrationally destructive.

The case, I believe, is clear that you gentlemen can take the action to rectify this obviously dangerous situation. By passing the legislation which will fix the conditions of employment you can allay, to a large extent, the very real fears now ingrained into the Zone worker. The nature of the legislation required has been amply stated by other testimony.

My only purpose today was to present to you evidence to clearly establish the critical nature of our current situation.

I would like to conclude my remarks by briefly addressing the potential consequences of a disruption to the Canal operations which is likely when all reasonable avenues of relief have been exhausted.

On the basis of FY 78 data, one could expect a daily loss of 35.2 transits, 2.5 of them being North Slope crude oil. Daily cargo loss would approximate 400 thousand long tons and loss in tolls revenues would approximate \$541 thousand daily.

Focusing on one commodity, with the shortage of crude oil due to the Iran crisis in the Eastern States/one would conclude that the disruption of North Slope crude supplies to the East Coast, which rely

solely on the Panama Canal, might be crucial and politically explosive.

Seventy percent of the Atlantic to Pacific commercial cargo transiting the waterway originates on the West Coast and terminates on the East Coast, while 33 percent Pacific to Atlantic cargo can be attributed to reverse flow. Obviously the impact on regional or local economies could be significant within the United States whereas, for those countries in South and Central America where the bulk of both its imports and exports depend on the Canal, the impact might well be disastrous even on the short term.

Data exists which could fully develop detailed potential impacts of a canal closure but, suffice it to say that, from a broad overview such a closure would generate major political and economic ripples and considerable grass roots interest on the part of those affected.

Clearly, then, the avoidance of such an eventuality is paramount if it can be done within the bounds of reason, justice and equity.

I hope that this information will aid you to assess the situation as it exists, the potential consequences of both favorable and unfavorable action on the part in Congress and in the end contribute to resolving the problems facing us as employees and the two nations who have undertaken the new relationships contained within the Panama Canal Treaties.

APPENDIX I - PCC/CZG ACCIDENT FREQUENCY RATES

I. a. - Bureau Accident Frequency Rates CY 75-78

<u>Bureau</u>	<u>CY 75</u>	<u>CY 76</u>	<u>CY 77</u>	<u>CY 78 (3 Qtrs.)</u>	<u>Percent Increase</u>
Engineering & Construction	3.28	2.52	4.87	6.19	27
Marine	4.94	5.56	6.35	8.96	41
Transportation & Terminals	11.35	14.61	7.86	14.04	78.6
Supply & Community Services	1.95	1.85	1.79	3.50	95.5
Civil Affairs	2.31	4.17	6.57	10.73	63
Company/Government Average	4.82	5.35	5.37	8.41	56.6

I. b. - CY 78 (3d Qtr.) Accident Frequency Rates

<u>Division</u>	
Marine Bunkering	30.88
Police	30.02
Fire	28.66
Railroad	17.90
Terminals	16.54
Canal Protection	12.36
Locks	11.98
Dredging	11.70
Transit Operations	10.91
Industrial	9.03

Source: CY 77 and CY 78 3d Qtr. Operating Bureau Disabling Injuries Report.

APPENDIX II - PANAMA CANAL MARINE ACCIDENTS, FY 74-78

	<u>FY 74</u>	<u>FY 75</u>	<u>FY 76*</u>	<u>FY 77</u>	<u>FY 78</u>
No. of Accidents	41	41	78	64	57
Est. Damage (millions)	\$3.769	\$2.872	\$4.463	\$5.160	\$5.438
Est. Cost/Accident (thousands)	\$91.9	\$70.0	\$57.2	\$80.6	\$95.4
Frequency (accidents/oceangoing transits)	1/441	1/540	1/290	1/312	1/274

Note: * Includes 3 month Transition Quarter

APPENDIX III - DISCIPLINARY ACTIONS BY ORGANIZATION
PANAMA CANAL COMPANY/CANAL ZONE GOVERNMENT

<u>Organization</u>	<u>FY 75</u>	<u>FY 76</u>	<u>TQ</u> <u>FY 76</u>	<u>FY 77</u>	<u>FY 78</u>
Executive Secretary	0	2	0	0	0
Administrative Services Divn.	6	4	0	1	4
Civil Affairs Bureau	34	30	6	35	55
Financial Vice President	2	2	0	0	1
Engineering & Construction Bureau	84	84	20	91	102
Health Bureau	27	21	5	42	35
Marine Bureau	101	88	30	109	125
Personnel Bureau	5	3	1	3	6
Supply & Community Services Bureau	58	67	21	55	64
Transportation & Terminals Bureau	296	188	53	212	308
Reprimands	396	335	97	357	434
Suspensions	217	154	39	191	266
Totals	613	489	136	548	700

Mr. O'DONNELL. One of the sections I have pertains to employee safety. I wanted to tell you that the accident frequency rate involving disabling injuries throughout the Panama Canal Company has shown a drastic increase of 57 percent from 1977 to 1978. Also, under that particular paper the ship accidents—the frequency of accidents involving transitting ships—shows the same alarming rate.

In 1975 there was one accident for every 540 ships that went through the canal. And in fiscal year 1978 the frequency rate has increased over 95 percent to one accident for every 278 ships.

I would also like to bring out the disciplinary actions to the employees has increased. Employees receiving suspensions or reprimands have increased drastically. In 1977, there were 548 disciplinary actions that were taken against the workers; in 1978, this number had increased to 700. The increase is approximately 28 percent, with an increase in suspensions relating to 40 percent during the same period.

I have some statistics to back this all up in the presentation that I hope will be included in the record.

The purpose of bringing this out is to show you that the employees are deeply concerned about what is happening to them, and it is being reflected in the canal operation itself.

I have here a statement from the national president of the American Federation of Government Employees.

Mr. MURPHY. We will make his statement a part of the record at this time.

[The statement was inserted previously.]

Mr. O'DONNELL. Mr. Blaylock wants you to know he is very grateful that he is going to have the opportunity to talk to you when you go back to Washington, but he did want me to tell you that the American Federation of Government Employees, AFL-CIO, has discussed provisions of title VII in hundreds of hours of meetings with the executive branch and the legislative branch, and at no time has there been any reservations or stipulations expressed in any of these meetings regarding the nonapplicability of title VII to U.S. citizens located in the Canal Zone or in Panama.

We would consider, he said, any effort to deprive these U.S. citizen employees of the rights for which they have been waiting for a long time and which they now enjoy as a breach of faith by the administration.

President Blaylock wants you to know that it is absolutely clear that we are asking for the same rights for Panamanians as we do for U.S. citizens. At a minimum, insofar as the treaty itself does not preclude these rights, they should be at least equivalent to title VII of Public Law 95-454.

President Blaylock also would like to have placed into legislation those provisions of the "Federal Personnel Manual" that had to do with priority placement of employees back to the United States. He wanted to make sure there was an office set up that would oversee the fact that employees would be properly protected between now, March, and the end of the 3-year period.

The final thing that President Blaylock wanted you to know in his statement was that he has asked for changes in the two bills, and he supports the changes that local 14 is asking for, and he

believes that these changes are essential for the work force here in the canal.

Going to my particular presentation I have here, I am going to summarize rather quickly for you because I know you have been sitting for quite some time and you have other people to talk to.

Mr. MURPHY. Take your time.

Mr. O'DONNELL. Mr. Chairman, I am James O'Donnell, and this is Dave Baglien.

Dave is the first vice president of local 14.

Although there are points of disagreement among the various unions representing both U.S. and non-U.S. employees, essentially regarding collective bargaining, there are distinct broad areas of agreement on most of the issues in the treaty.

Local 14 fully supports the aspirations of the other unions for the legislation required to carry out those treaty provisions that insure the continuing of the protections no less favorable to the employees than they have now.

I am relying on this committee and your colleagues in the House of Representatives who will soon be voting on the implementing legislation to provide the necessary job safeguards, benefits, and incentives to retain the dedicated employees that are currently on the Federal payroll.

The list of points we are looking for are as follows:

First, the employees, without question, need a collective bargaining system. Local 14 firmly believes that only through the collective bargaining process and the application of title VII of the Civil Service Reform Act can the rights and benefits of the employees be protected.

All we and the labor movement ask is that true representation for employees be afforded through the acknowledged and long-accepted process of collective bargaining, as recognized in title VII of the Civil Service Reform Act of 1977.

Local 14, AFGE, is requesting that section C on page 30 of H.R. 1716 be deleted, as well as section 2252 under subchapter 7, Labor Management Relations in H.R. 111.

Second, the restoring of the tropical differential to the former rate of 25 percent—and to be effective on October 1, 1979—would be a step in the right direction for those employees who elect to stay and make the treaty work for the good of the United States and world commerce.

Third, employees are extremely concerned about the fact that PX and commissary and postal privileges will be denied them after 5 years.

Fourth, I would like to quote the specific language from article X of the treaty:

The United States of America shall, with respect to the Treaties: (b) * * * seek special legislation to provide more liberal entitlement to and calculation of retirement annuities than is currently provided for by law.

It is perfectly clear from the language used in article X that liberalized benefits and liberal calculations of those benefits envisions two separate actions. For example, one, to provide more generous and liberal benefits than the regulations currently provide in a large scale RIF action; and, two, after the liberalization of

benefits have occurred, then liberal calculations of the more generous benefits must then be accomplished.

We propose that the rate of annuity be computed at 3 percent of the employees' high-1-year pay for such service as does not exceed 20 years. With all due respect to the administration's proposal, I do not believe that an additional one-half of 1 percent will attract and keep the type of career-minded employees we need. Quite frankly, we are talking about a new agency that is going out of existence in some 21 years, and 3 percent annuity rate is a desperately needed incentive to improve employee morale, to keep key employees and to keep the efficiency of the organization during the difficult and uncertain days that lay ahead of us.

Fifth, local No. 14 has been proud of our health care, and we would like to see it continued after the treaty. We are concerned about maintaining the current high standard for physicians and dentists. At the present time the Canal Zone has a licensing board, in addition to a hospital credential committee. We are interested in keeping the credential committee active after 1979.

Sixth, consideration should be given to teachers and railroad employees. Local 14 would like to request that title V, United States Code, be amended to include as credible service, for the purpose of the Civil Service Retirement System, certain periods of service by individuals before the date they were employed by the Canal Government or the Panama Railroad Company.

Seventh, we are asking that the implementing legislation concerning employee benefits and protection should be extended to all U.S. agencies conducting operations on the Isthmus.

As a final consideration, although not directly related to the proposed legislation, I believe that the treaty is being either misinterpreted or interpreted in bad faith. I refer to article IX of the treaty, applicable laws and law enforcement.

I would like to ask this committee to investigate article IX to see if it is being fully complied with.

This article refers to nonprofit organizations in the Canal Zone that wish to continue operation after October 1, 1979. It is clear from a reading of the treaty that those organizations are to enjoy, during the transition period that ends April 1, 1982, the same terms and conditions of operation as at present.

Let us face it, gentlemen, the treaty was and is a destroyer of morale and a destroyer of incentive to work.

I have submitted, as an attachment to this statement, the specific language that may be used to amend either H.R. 1716 or H.R. 111, or both, to provide for these labor guarantees and incentives.

I have discussed these amendments with both the State Department and the Office of the Secretary of the Army, and have been advised that neither office would object to the inclusion of such amendment in the final bill.

As the October 1, 1979, treaty effective date draws nearer and the confusion surrounding the treaty implications dies down, both of these parties realize that the present skilled work force is absolutely necessary. Therefore, it is most advisable to implement more liberal provisions to retain the skills and expertise of the employees that now keep the canal in operation and to provide real

incentives to those key personnel we will be required to hire in the future years.

Local 14, AFGE, is requesting that pages 31, 32, 33, 37, 41, and 44 of H.R. 1716 be replaced with the enclosed attachments.

Our committee has asked for my comments on the bills, and I have given them to you.

I would like to offer some advice. If you want to keep the canal operating as a marvel of American know-how, as an entire national showcase of Americans working side by side with Panamanians, then make the necessary changes for the employees who are willing to pass on their knowledge to the people of Panama.

In terms of cost, these suggestions are nominal. In terms of worth to the canal organization, U.S. prestige, and world commerce, these are invaluable.

Thank you very much.

Mr. MURPHY. Mr. Baglien?

Mr. BAGLIEN. Thank you, Mr. Chairman.

Gentlemen, at the risk of belaboring one small point, I would like to talk to you about the Canal Zone College, because I understand yesterday that some of you had questions that were not satisfactorily answered.

In addition to being first vice president of Union, I am also a counsellor at the college. And I would like to tell you a little bit about it so that you have some idea of why we are concerned and where the money comes from, which seems to be of concern to most of you.

The college, for the fiscal year 1978, the billed cost to the college was \$1.6 million. The Company added to that 26 percent surcharge to cover services such as home leave, use of data processing equipment, personnel, and so on, so the basic cost of the college last year was \$2 million.

Of this cost, \$600,000 was recovered on an across-the-board tuition paid across the counter by students; \$400,000 of it was recovered by reimbursibles from organizations like the Army, FAA, and so on; \$960,000 came into the Company as the Company government, as tuition payments.

I suspect the fiscal year budget for 1979 will be very similar. The tuition for students at this college—there are two tuitions that are sponsored—there is a sponsored and unsponsored rate of tuition. The sponsored rate for a full-time student is \$240, and a nonsponsored rate is \$1,120. For part-timers it is \$25 for sponsored, and \$65 an hour for nonsponsored.

Currently we have 420 full-time students. We have had for about the last three semesters. We have about 1,225 part-time students, so a population of about 1,650.

This population is made up of full-time: The population is about 73 percent United States, 25 percent Panamanian, and 2 percent miscellaneous other people.

That's full-term population; excuse me. The part-timers are about 65 percent United States, 30 percent Panamanian, and 5 percent others.

As far as the salaries in the college are concerned, the salaries take about 81 percent, I would guess, of the billed costs; in other words, 81 percent of the \$1.6 million.

In reading over the enabling legislation, I was trying to find a spot that something about the college would fit in, but I don't find any place that would make any sense, so in place of that, AFGE Local 14 has drafted a resolution which I would like to submit and seek your support for.

The resolution reads as follows:

"Resolution: Whereas, the reduction of service or elimination of Canal Zone College would substantially reduce the quality of life for citizens of the Isthmian community;

"Be it therefore resolved, that this committee go on record as supporting the continuation of Canal Zone College;

"And be it further resolved, that we urge the DODDS to continue operating Canal Zone College in a manner that is beneficial to the citizens of the Isthmian community."

Mr. MURPHY. Thank you, Mr. Baglien.

On page 10, Jim, you have a cost of \$3.6 billion to implement the treaties over the next 20 years. Would you submit for the record the bases for those figures?

Mr. O'DONNELL. I will get the information and submit it.

[The information follows:]

JOIN



LOCAL No. 14 AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES

Affiliated with the AFL-CIO—The Granddaddy of Canal Zone Locals

Serving Federal Employees at the Crossroads of the World

Chartered October 9, 1932

March 6, 1979

Box 1703
Balboa, Canal Zone

John M. Murphy, Chairman
Merchant Marine and Fisheries
Committee, Room 1334, Longworth
House Office Building
Washington, D.C.

Dear Congressman Murphy:

As you will recall, during the February 23 and 24 hearings on the Panama Canal Treaty implementing legislation, Local 14, American Federation of Government Employees, made the following statement in our testimony:

IT IS ESTIMATED THAT 3.6 BILLION DOLLARS WILL BE THE COST OF IMPLEMENTING THE TREATIES OVER THE NEXT 20 YEARS.

Per your request I am submitting the following cost breakdown of the 3.6 billion dollar figure.

TRANSITION COST

IN MILLIONS

Relocation of facilities, severance pay, etc.	\$ 50
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TRANSFER OF ASSETS TO PANAMA (presently on books)

At entry into force	\$ 92	
During life of treaty	4	
At end of treaty	<u>522</u>	
	618	\$ 618

FIXED ANNUAL COSTS

\$10 million fixed annuity payment to Panama	\$ 10	
\$10 million public service payment to Panama	10	
\$20.1 million interest lost on U.S. net investment	\$ 20.1	
\$ 9.2 million additional costs of early retirement	<u>\$ 9.2</u>	
Over life of treaty x 20½ years	\$ 49.3	\$ 998

\$0.30 per PC net ton payment to Panama (51.2 million in FY 1980).
Escalated over first five years at 1% for traffic growth

\$261

Escalated over succeeding 15½ years at 9% (1% traffic growth and 8% inflation) in accordance with treaty provisions that this payment be indexed.

\$1705

\$1966

TOTAL

\$1966

\$3632

We do in unity that which is impossible in disunity

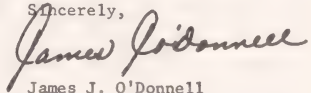
The \$3632 million is a conservative estimate with transition costs shown being the lowest estimate. The transfer of assets to Panama does not include assets which will be acquired during the life of the treaty (about \$20 million annually) and turned over to Panama at the end of the treaty period. Nor does it include \$30 million in facilities being turned over to DOD (schools and hospitals) that will eventually be turned over to Panama. Actually, none of these figures for assets being transferred to Panama reflects the cost that it would take to replace them, that is, the present current market value of the assets.

You may be assured that your hearings were of great interest and benefit to all Federal workers here in the Canal Zone.

Thank you for your time and cooperation. I look forward to hearing from you soon.

With best regards.

Sincerely,



James J. O'Donnell
President, Local 14, AFGE

Mr. MURPHY. Do you think the Commission should be under some corporate form similar to the present Company or an agency form as I have suggested in H.R. 111?

Mr. O'DONNELL. Local 14 has studied both bills, and we believe—especially after talking to the Post Office and Civil Service Committee—that H.R. 111 would be the best bill for the labor force on the Isthmus, because of that provision that allows the retirement benefits to come from tolls.

As Mrs. Spellman said, and Mr. Hanley said, if we could get our benefit from some other source other than the Civil Service Retirement Fund, they would go along with it; and your bill, H.R. 111, does just that; therefore, I believe your bill is the bill we are going to support.

Mr. MURPHY. OK. Mr. Bonior.

Mr. BONIOR. I don't know if you answered the chairman's question. The question, I believe, was: Do you support the corporate form of private members on the Commission, or public member?

Mr. O'DONNELL. I deliberately tried not to answer that question; and I am glad you picked it up so well.

The reason I didn't—and it was not that I was trying to be dodgy—is that I am trying desperately to hold my remarks just to labor protections and employee benefits, rather than that complicated problem of how the board members should be picked or where the money should go to as far as the company is concerned.

Mr. BONIOR. Well, Mr. Wall seemed to think that was a very important labor consideration, to have a member of the maritime industry and a member of labor on the Commission. I assume there is—I won't assume anything—I will just let it go at that.

Mr. Baglien, you mentioned or you talked about the college, and I am pleased you filled us in on some more of the details with respect to the college; and the statistics are very interesting. The earlier representatives of labor who testified indicated that they did not think the shippers and workers should bear the cost of ancillary, if you will, services.

An example was given of fire and police.

Mr. BAGLIEN. And the college.

Mr. BONIOR. I assume you disagree with that?

Mr. BAGLIEN. Well, it will be a changed situation when October 1st comes. The college will go to the Department of Defense, and that's why I purposely said that there does not seem to be any place that an addition fits into the legislation at this time. That's why a resolution makes the most sense.

The Department of Defense will conduct the college, at least for a year, we understand. The Commission will pay tuition for its employees' dependents, as it is doing now, and as the company is now. I think that's a benefit of working on the job.

Mr. BONIOR. I agree with you.

What of the 27 percent who are Panamanians, what area are they studying? Do you have any rough breakdown there? Are many of them into—I believe yesterday we heard testimony that you have a criminal justice program. I imagine that's a program to train people who are in law enforcement positions?

Mr. BAGLIEN. Yes; it is a 2-year program for police officers.

Mr. BONIOR. Do you get many?

Mr. BAGLIEN. Not a great many Panamanians are in that program. Most of them are more practical, and they go into the business program because that appears to be where the future jobs are in Panama at the present time.

Mr. BONIOR. Well, what transition services, education services, do you see that might be of benefit to this whole transition period being offered at the canal? Are there any policies within the college to create action, if you will, to train people to make a transition period run more smoothly?

Mr. BAGLIEN. Not as far as particular courses. We have a substantial Panamanian population, both members that work for the company who are Panamanians and outsiders.

For example, we have 15 classes of precollege English that include not just the young students but also a great many professionals in the community and also working persons, Panamanian students, Panamanian persons that are working for the company; and this has a tendency to bring the people together more, the Panamanian and the U.S. people together. I think it serves that function.

Mr. BONIOR. With the threat of the termination of the college, or at least melding of it with Georgia State, as I guess Congressman Fuqua has suggested in the legislation, would you agree it may be a valuable tool, in terms of the training of additional people for the transition and an affirmative action program or programs designed to train Panamanians to help in that transition, that might be a worthwhile consideration?

Mr. BAGLIEN. It could be. Community colleges in the United States do produce courses that—an industry walks in and they want a particular course, and the college produces a course. We have not ever been asked to do this, but I suspect we could do it.

We do have a great many of the working people, both Panamanian and United States who attend regularly. The evening—the part-time population—is three times as large as the full-time population, and the largest part of those are working people; and so there is continuous training going on. For example, we allow a student that does a 4-year apprenticeship to come and do 24 hours

of general studies with us, and then he receives a 2-year technical degree.

These types of programs are going on already.

Mr. BONIOR. Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Bauman.

Mr. BAUMAN. You raised questions, Mr. O'Donnell, in your statement about the status, for instance, of the nonprofit organizations. We heard a great deal of concern expressed yesterday about that, and just for your information and for the other witnesses, the chairman raised that question this morning with President Royo, and we will be meeting this afternoon for a very extended period of time with Ambassador Lewis. We were given a very, very general assurance that this would be taken care of, which I am sure other members hope to nail that down with some specificity this afternoon. That and other issues are indeed being addressed.

I want to ask you one question about the status of labor unions. I have tried to study this treaty as much as I could for the last year or so, and new revelations are being made every day as we hear testimony as to what it means or does not mean, which are immediately re-explained by the various State Department and other officials that are listening to the testimony, and we are told all kinds of meanings.

What is your understanding of the status of the labor unions if Panama became—I say becomes; they say regains—the territorial sovereignty over the Canal Zone in toto on October 1? Their constitution, unless it has been amended—and I realize there have been some amendments in the last few months—requires, for instance, that all labor union officials and boards of directors, in order to represent Panamanians, must be Panamanians.

Are your unions going to have to be relicensed under Panamanian law in order to represent Panamanians, or can you, in fact, continue to represent Panamanians?

Mr. O'DONNELL. Local 14 has approximately 800 members, of which 750 are U.S. citizens; about 50 are non-U.S. citizens.

AFGE is recognized all over the world. We are in Germany, Okinawa, et cetera; we have no problem in operating in all of these countries. We don't envision we will have any problem right here in the Canal Zone. It is possible that Panama may pass some special provision, but that is projecting ideas into the future.

At the present time I have full confidence that we will be able to operate here in the Canal Zone just like we do anyplace in the world.

Mr. BAUMAN. Well, my concern would be about your representing employees who work in the reduced areas. For instance, in the area that is not in the reduced areas but in the area turned over to Panama immediately, which is about 50 percent of the land. Can you continue to represent employees in that area without any legal problems with the Government of Panama?

Mr. O'DONNELL. That's where the problem is going to be, because we are going to run into a serious problem on that point. That's why local 14 is speaking out very strongly to have title VII under the Civil Service Reform Act, the law itself, applied here in the Canal Zone, which will guarantee the rights that the U.S. citizen is fully covered by a Federal law, which we have never had before.

Mr. BAUMAN. What happens to the Panamanian nationals who are members of the various unions?

Mr. O'DONNELL. In that case we are asking, as President Baylock stated in his testimony, that they be given, administratively, the same type of—the same type of law through regulation here in the Canal Zone, applied administratively.

Mr. BAUMAN. Would that be by the Commission issuing regulations?

Mr. O'DONNELL. That's correct.

Mr. BAUMAN. Thank you, Mr. Chairman.

Mr. MURPHY. Mr. Wyatt.

Mr. WYATT. Thank you, Mr. Chairman.

Mr. O'Donnell, on pages 8 and 9 you talk about implementing legislation, employee benefits, et cetera. Currently, apparently those who work for the Panama Canal Company receive 2.5 percent on retirement?

Mr. O'DONNELL. All employees are going to receive this benefit whether they are for DOD or for the Commission.

Mr. WYATT. What do you get now?

Mr. O'DONNELL. I am sorry; what we get now is this: We are getting the regular civil service retirement computation, which is: The first 5 years it is 1.5 percent; the second 5 years it is 1¾ percent, and every year thereafter it is 2 percent.

Mr. WYATT. That is for civil service now?

Mr. O'DONNELL. That's correct.

Mr. WYATT. And you are asking for 3?

Mr. O'DONNELL. Yes, we are asking—we are asking that it be for—all service would be at 3 percent. Right now I am entitled to 2 by law. The legislation is proposing 2.5 percent, and I am proposing 3 percent.

Mr. WYATT. DOD does not get 2.5; is that correct?

Mr. O'DONNELL. They do. In the legislation, if passed, they will get the 2.5 percent.

Mr. WYATT. So you have then where you are now, which is at 2.5?

Mr. BAGLIEN. Now at 2.

Mr. WYATT. It is now at 2, and would go to 2.5?

Mr. O'DONNELL. No. At the present time it is 2 percent. If Mr. Murphy's bill passes it will go to 2.5 percent. I am asking that you change Congressman Murphy's bill, and where he is suggesting 2.5 percent, I am suggesting you replace that with 3 percent.

Mr. WYATT. OK. How would that differ from what DOD employees are currently getting?

Mr. O'DONNELL. At the present time they are getting 2 percent.

Mr. WYATT. Does the bill change that to 2.5?

Mr. O'DONNELL. Yes, sir.

Mr. WYATT. And you then suggest they also get 3?

Mr. O'DONNELL. That's correct.

Mr. WYATT. Would this not be a very different situation from DOD employees in other parts of the world?

Mr. O'DONNELL. That is correct; that is correct, and I use as justification for that that these employees of DOD are here and their primary mission is to help put ships through this canal. They came here as career employees and they, too, lost their jurisdiction;

they too lost their courts and so forth, just like the canal employees did, and I think separating the two was wrong.

I represent both groups, and as their president I would like to see them get the same benefits as the Panama Canal Commission employees would get.

Mr. WYATT. As it currently operates today, your dependents, for educational purposes, are paid one roundtrip to the United States?

Mr. O'DONNELL. No. At the present time we don't have that. They are going to be given that for the Commission, one roundtrip air per year. That is what is being—and Congressman Murphy's bill—it is being proposed that that be done; and I am asking that you extend that same privilege to the DOD employees.

Mr. WYATT. Again, this would be different from DOD employees anywhere else in the world?

Mr. O'DONNELL. Yes, sir.

Mr. WYATT. That's all of the questions I have, Mr. Chairman.

Mr. MURPHY. Mr. Lent.

Mr. LENT. Thank you.

On that 3 percent, was there any other retirement system that exists, so far as you are aware, that is based on a 3 percent per annum, with a final average salary based on a single year's highest salary?

Mr. O'DONNELL. To my knowledge, no.

Mr. LENT. Well, my district is uncomfortably close to New York City, where the employees, the firemen and policemen and transit workers, the sanitation workers, enjoy a retirement system of 2.5 percent based on the final number of years, based on the final average salary of the final years, and that system has been much abused, and much of the fiscal difficulties of the city can be directly traced to the administration of that particular retirement system. In fact, there are some policemen, firemen, transit workers, sanitation workers who in their final year on the job are given a great deal of overtime so that when their retirement comes, it is computed on the basic salary, which might be, say, \$20,000, but if they have got another \$10,000 worth of overtime, they would have their retirement computed on \$30,000—their base salary plus the overtime—with the result that there are some retired New York City employees who are collecting as much on retirement as they were paid during their active working lifetime, and in some cases more.

So I just think 3 percent may be taking it a little too far.

Mr. O'DONNELL. The reason I proposed that, along with the other proposals I made, local 14 is deathly afraid that after October a large majority of the employees may leave this area if there is not sufficient incentive to stay. Our local has looked at this situation very carefully. We truly believe those suggestions we made are the incentives that will keep the employees here after October to help keep this canal running. I don't know about any employees in the zone who have ever abused the retirement system here. I am not familiar with your particular area, but our union would not condone that.

Mr. LENT. I see; that is somewhat reassuring.

I have no further questions, Mr. Chairman.

Mr. MURPHY. Mr. Lowry.

Mr. LOWRY. Thank you, Mr. Chairman.

Mr. O'Donnell your recommended changes are an excellent job of representing your employees. In your last sentence you say, in terms of cost involved, those recommended increased benefits are nominal in cost. Do you have an estimate as to what the fiscal impact of going to 3 percent and the other increased benefits you are calling for will cost?

Mr. O'DONNELL. No, sir, I do not have those figures. I have never worked up such figures, but I understand the Panama Canal Company has done just that, and I will try to see if I can't get what they have arrived at, and submit it for the record.

Mr. LOWRY. I suppose we would need that to determine whether they were really nominal or not, don't you? It could be fairly expensive.

[The information was not received at time of printing.]

Mr. LOWRY. Did you say in your verbal part—I didn't see it in the written part—how much has the accident rate increased? Did you say 500 and some percent?

Mr. O'DONNELL. I have submitted it. It is part of the record here. The accident rate, the employees' frequency rate involving disabling injuries throughout the Panama Canal Company-Government has shown a drastic increase, to 57 percent, from fiscal year 1977 through fiscal year 1978.

Mr. BONIOR. Are you having OSHA—OSHA applies down here, does it not? Does it apply, and is it in force?

Mr. O'DONNELL. I believe the answer to your question, Congressman, does OSHA apply here, the answer is yes.

Mr. BONIOR. Is it enforced?

Mr. O'DONNELL. I don't know that answer.

Mr. BONIOR. Well, the reason I raise this, it is not just the situation that is existing here. We are finding fatality and accident rates all over the United States increasing also, and I just wish my good friend from Idaho, who didn't make the trip, were here to hear that also.

I yield back. I am referring to Congressman Hansen. I yield back to my colleague from Arkansas.

Mr. LOWRY. So that was the rate of increase in accident involvement; and then you also had a rate of increase of disciplinary reaction?

Mr. O'DONNELL. Yes, sir.

Mr. LOWRY. How much was that percentage?

Mr. O'DONNELL. Disciplinary actions, the employees receiving suspensions or reprimands, is another factor which is indicative of the overall employee motivation and which we see clear signs of deterioration.

In 1977 there was 548 disciplinary reactions that were taken within the work force. In fiscal year 1978 this number increased to 700, an increase of nearly 28 percent, with the increase in suspension increasing nearly 40 percent during the same period.

Mr. LOWRY. One last question: You were referring to title VII collective bargaining rights. Is there something in this legislation that denies that?

Mr. O'DONNELL. In Congressman Murphy's bill, H.R. 111, and H.R. 1716, both bills have a section which I have quoted which allows for the exclusion of title VII to the Canal Zone.

Mr. LOWRY. Thank you.

Mr. MURPHY. Mr. Carney.

Mr. CARNEY. Yes.

Mr. O'Donnell, I have to think about you saying that your union would not abuse that retirement thing, and it reminds me of a gentleman in the same position as you, and probably from the same background on that island over there. His name is Mike Quayle, and I think that is why New York City is in the problems they are right now.

Mr. MURPHY. I assure the gentleman there will be quite a difference of opinion.

Mr. CARNEY. Mr. O'Donnell, I would like to ask you if AFGE took a position on the treaty?

Mr. O'DONNELL. No, sir.

Mr. CARNEY. Thank you. I had one other question. I had a comment: I noticed they were paying 25 percent in 1964 and now 15 percent for tropical duty. I might add that brings to mind something we might want to do, and that would be, get a 25-percent incentive to work in Washington, the way the weather has been lately in Washington, as compared to here. I don't think any of us want to leave tomorrow; it is so nice down here.

What concerns me the most is the fact we have had a drastic increase in accidents in fiscal 1978. I believe you said 95-percent increase. Would you want to take some guess as to why that might have happened?

Mr. O'DONNELL. Yes. I believe I can. I would like to believe it is directly related to the treaty, and the apprehension that the employees now have concerning anything relative to what their future is going to be. Are they going to be protected in this implementing legislation? Will it pass Congress? Will it pass in time? In short, the whole structure that we have been working under for many years is being changed.

For example, I have 30 years here with the Government, and with one of the best organizations, I think, in the world. It is run like clockwork. We are afraid that the change that is coming to pass is going to affect the fine machinery of that clock. We don't know if we are going to have jobs into the future or are we going to be let off, and as the treaty states, you know, we are going to be replaced by Panamanians over a period of time.

The treaty also states they want to get rid of 10 percent of the work force over a 5-year period. The treaty also states preferential hirings for Panamanians against Americans, which is fine; but you must realize those of us here have a great deal of apprehension because of that. When will they do this? How will we be affected? Will they do it tomorrow? Nobody has given us any facts.

The bills that you have here, H.R. 111, is very good; so is H.R. 1716. We would like to see it better, because with better protection than what is in Congressman Murphy's bill, these employees would be able to stay here under some of the adverse action conditions that may come.

Mr. CARNEY. I can fully understand what you are saying. I would hope that's not the reason that the accidents are occurring, 95-percent increase. I can't believe that the people down here—I am sure they are preoccupied with their instability—but I cannot believe that that carries over daily to their jobs, not that they allow themselves to be put in the precarious position to raise the accidents that much. You can't help but say you come before us today with all your statistics and all you are wanting in that, and it is almost like the saying, of coming to shut the barn door after the horse has left, because AFGE didn't take a position on the treaty to start with, and it puts us in a difficult position.

Mr. O'DONNELL. The main reason, Congressman, is this: AFGE is very much interested in protecting the employee. As for foreign affairs, it does not come within our purview, and we would like to say that we speak well for the employees, but we would like to stay in that field, because once we move out of it we are liable to be clobbered; and I think AFGE can speak well for the employees, and has spoken well in the past for employees; and so you decide what you want to do in the foreign policy, and we are asking you to protect the employees with these changes that we are proposing.

Mr. CARNEY. Well, my point being, of course, that if the foreign policy had not changed, your employee would not be in that precarious position. I don't understand why you didn't do something prior to the treaty; but that's water over the dam.

Thank you. No further questions.

Mr. MURPHY. Governor Evans.

Mr. EVANS. Yes; I would like somebody to tell me, what is the full-time equivalent of college?

Mr. BAGLIEN. 725.

Mr. EVANS. That's the part-time people?

Mr. BAGLIEN. That's the full-time equivalent, 725.

Mr. EVANS. Thank you. That's all.

Mr. MURPHY. Any other questions?

Thank you very much.

The next panel: Mr. William Sinclair, area director, American Federation of State, County, & Municipal Employees, AFL-CIO. He is accompanied by Luis Anderson, secretary general, local 907; and Saturnin Maugé, president, AFSCME, local 900.

Mr. Sinclair, if you will proceed.

STATEMENT OF WILLIAM SINCLAIR, AREA DIRECTOR, AMERICAN FEDERATION OF STATE, COUNTY, & MUNICIPAL EMPLOYEES; ACCOMPANIED BY LUIS ANDERSON, SECRETARY GENERAL, AFSCME LOCAL 907; AND SATURNIN MAUGÉ, PRESIDENT, AFSCME LOCAL 900

Mr. SINCLAIR. Mr. Chairman, our statement will be read today by Mr. Saturnin Maugé, president of local 900.

Mr. MAUGÉ. My name is Saturnin Maugé, president of local 900, Panama Canal Company-Canal Zone Government Employees Union. I am accompanied by Mr. Luis A. Anderson, secretary-general, local 907, Armed Forces Employees Union, and Mr. William H. Sinclair, Panama representative for the American Federation of State, County, & Municipal Employees, AFL-CIO, parent body of locals 900 and 907.

Our organizations represent, jointly, approximately 5,000 dues-paying members employed with Department of Defense agencies and the Panama Canal Company-Government operating in the Republic of Panama. Our membership is organized on an industrial basis encompassing professional, semiprofessional, white-collar, and blue-collar workers of both nationalities.

We appreciate the opportunity to set forth our views before the Subcommittee on Panama Canal in relationship to the proposed legislation to implement the Panama Canal Treaty of 1977, with special emphasis on those issues relating to employee benefits, welfare and labor-management relations.

Our executive boards, membership and our international union welcome the members of your subcommittee and hope that your stay in Panama will not only be pleasant but also productive for all concerned, given the importance and far-reaching effects of the subject matter which gravely concerns our constituency as the affected party and the U.S. Congress as the generator of legislative action that will give form and life to the concepts contained in the aforementioned treaty.

We are cognizant of the fact that this subcommittee is not primarily concerned with employment matters, employee benefits or welfare. But we are likewise aware that your special interest is the efficient operation of the Panama Canal waterway. You must, therefore, be concerned with the apprehensions and expectations of the canal's superlative and indispensable asset—its work force.

The uninterrupted, smooth functioning of this treaty's contribution to world commerce and navigation is the outcome of the toiling of men and women of superior ability, capacity and dedication. It is above all the product of workers who felt satisfied and secure in their jobs. Be assured that the continued efficient operation of the canal and related U.S. agencies in the Republic of Panama depends, more than any single factor, on the preservation of that feeling of satisfaction and security of the work force.

In accordance with your hearing notice dated February 9, 1979, the Panama Canal subcommittee's open hearings are related to H.R. 111, H.R. 1716, H.R. 454, and H.R. 1511, in that order.

As of this date, we have not received copies of H.R. 454 and H.R. 1511. Consequently, our comments are addressed to H.R. 111 and H.R. 1716 as they relate to matters of interest to U.S. Federal workers in the Republic of Panama and what they may look forward to between now and the year 2000.

Based on the foregoing, we shall address certain areas of both H.R. 111—sponsored by Congressman John Murphy—and H.R. 1716—sponsored by the executive branch. They are the major concerns of our membership and the majority of workers in the canal area.

EMPLOYMENT SYSTEM

Section 142(b) of the Murphy bill and section 303(b) under "Section 142 Panama Canal Employment System" should be deleted in its entirety as it establishes the possibility of applying dissimilar employment systems to the different agencies of the U.S. Government operating in the Republic of Panama. We strongly feel that this concept opens the door to the inequities of the past in which

employees performing similar or identical duties received unlike benefits according to the whims and fancies of the various agencies. We recommend that the employment system outlined in both bills be applied uniformly to all executive agencies operating in the Republic of Panama.

LABOR-MANAGEMENT RELATIONS

Section 303 of the administration's bill and section 225 of the Murphy bill establish that whichever labor-management relations policy is adopted by the U.S. Government agencies shall have incorporated therein provisions of sections 7102, 7106, 7116, 7120, and 7131 of chapter 71 of title V, United States Code. These sections are highly restrictive, limiting the operations of labor unions, while reducing collective bargaining to a mere formality, to create the illusion of compliance with a fundamental right of workers in any democratic system.

This trend may be tolerable within the Federal sector in the United States where salaries and fringe benefits are determined by Congress, influenced by powerful lobbying of U.S. labor organizations which, for all practical purposes, is a form of bargaining.

Locally, the implementation of such a system would be a regressive step; it would carry us back to the days when non-U.S. citizen employees did not possess legal channels to protect their interests and as a result their rights and benefits were curtailed.

In addition, the aforementioned sections of title V are diametrically opposed to the general principles contained in the Labor Code of the Republic of Panama and thus violate paragraph (2) of article VII of the agreement in implementation of article IV.

This section should be deleted for the reasons mentioned above. In lieu thereof we urge that a task force comprised of representatives of the executive agency and labor organizations hold discussions pursuant to establishing a labor-management policy that will provide full-scope collective bargaining.

In addition, we must emphatically state our belief that the application of chapter 71 of title V, United States Code—as amended—or of any of its sections, or of any system of labor-management relations parallel to, or derived thereof, would be detrimental to the establishment of constructive relationships between the administration and the work force and would in the end adversely affect operation of the waterway and its supportive apparatus. Further, we strongly urge the establishment of a system at least identical to that being used by the U.S. Postal Corporation.

As to early retirement, we recommend that provisions of section 325 of the administration's bill and section 205 of the Murphy bill be applied equally to all employees of U.S. Government agencies in the Republic of Panama, with the exception that the voluntary retirement provision excludes employees of the Defense Department unless they were transferred from the Panama Canal Company-Canal Zone Government as a result of the transfer of functions to be effected upon entry into force of the new treaty.

The canal administration feels that this measure is necessary to retain highly qualified personnel after October 1, 1979, and in

addition that the Company-Government will suffer a major reduction in force due to treaty implementation.

We feel that the second reason stated in the paragraph above also applies to the Defense Department. Even though it is not established in the treaty, we can logically conclude that military bases in the present Canal Zone will be reduced in number and size as the Republic of Panama assumes greater responsibility in defense of the canal, especially so as we approach the year 2000 when supposedly all U.S. military bases will close, with the resulting loss of all jobs.

On the other hand, even though the Panama Canal Commission ceases to be a U.S. Government agency in the year 2000, the canal will continue operating, thus insuring jobs for those employed at that time.

Regarding the immediate impact of treaty implementation on the present DOD work force, the following should be considered:

1. The transfer of functions by the Company/Government to DOD will bring about the displacement of workers presently employed by DOD.

2. DOD has notified us that after the 30-month transition period, when non-U.S. citizens will no longer receive medical attention at military medical facilities, transferred from Panama Canal on October 1, 1979, there will be a reduction of no less than 750 employees who will have retention rights throughout DOD thus, again, displacing present employees.

3. When U.S. postal and DOD commissary privileges are withdrawn from the Panama Canal Commission U.S. citizen employees, 5 years after entry into force of the treaty, a similar reduction as described in (2) above will take place.

It is easy to visualize the devastating social and economic impact on the lives of many young and highly skilled graduate apprentices and trainees, clerical, administrative personnel plus many others who will be left jobless and without sustenance forced on them by the saturated labor market in the Republic of Panama, leaving them no choice but to emigrate, thereby robbing the canal effort of human resources available locally and that are so vital for the accomplishment of the fundamental purpose of the treaty.

It would be naive to ignore the chain reaction effect that this would have on the Panamanian economy, presently struggling to stay afloat and which will require a substantial amount of time to stabilize, even when influenced by the direct and indirect economic boost provided by the new treaty. The social and political connotations that could and most probably will arise from this situation are too grave and far reaching to be ignored.

Arguments presented by management supporting the limited application of the proposed provisions to DOD employees, ignore the fact that treaty provisions imply in their intent and spirit, the phase down, gradual or otherwise, as determined by the executive branch of the Pentagon, of the U.S. military presence in the Republic of Panama.

It must be assumed that as the National Guard increases its expertise and defense capability, the U.S. defense role and mission in the area will diminish; consequently, reducing their personnel needs, hence, reduction in force.

Accordingly, younger or new employees cannot and will not be able to consider employment in DOD agencies as a career, inasmuch as the possibility of finding themselves out on the streets without jobs and adequate means of living up to their accustomed economic commitments are too real. The possibility of undergoing the traumatic effects of a RIF action will be ever present, not enabling them to plan ahead or to establish their roots.

In view of the aforementioned, and adding a number of other similar circumstances that will develop, we feel that voluntary retirement should be made available to present DOD employees as a means of reducing the impact of said reduction in forces and to be able to retain the services of highly skilled younger employees.

Also, of special consideration, is the fact that only non-U.S. citizens will be affected by the reductions since U.S. citizens under similar circumstances will be relocated in the United States.

Sections 326 of the Executive proposal and 206 of Congressman Murphy's proposal should be amended to extend coverage of the provisions contained therein to employees of U.S. forces in Panama. This is consistent with our views on early retirement provisions and is primarily aimed at providing equity and justice throughout U.S. Government agencies in the Republic of Panama.

In addition, it is our belief that the very delicate mission of adequately protecting the canal cannot be accomplished efficiently if the civilian component of said forces are denied identical benefits offered to their counterparts as a whole. To establish differences in benefits accorded to groups of employees of the same employer is not only unfair, but outrageously discriminatory to the employees denied such benefits.

Section 329, subsection (c) of the administration bill which implements paragraph 2(b) of annex C of the agreement in implementation of article IV, authorizes the purchase of a nontransferable deferred annuity for the benefit of each employee of U.S. forces—see section 329(c) of the administration bill.

It is obvious that this provision, especially in regards to eligibility, violates the spirit and language of the treaty. It has been the product of unilateral interpretation of annex C of the cited agreement on the part of the U.S. Government.

During negotiations leading to the present treaty, it was agreed that all non-U.S. citizen employees working for U.S. forces in Panama would receive retroactive retirement coverage for all periods of employment with said U.S. forces during which they were not participating in a retirement program. This retroactive payment was to be made to the social security agency of Panama as outlined in paragraph 2(b) of annex C of the agreement in implementation of article IV.

If this portion of the bill were to pass as is, it would leave a large percentage of the employees in question without retroactive retirement coverage. The United States was committed by the 1955 treaty to provide retirement coverage for non-U.S. citizens employed by their forces in Panama (see attached letters from the U.S. Army commander in chief and adjutant general, dated 1957 and 1958, respectively).

In open violation of said treaty they failed to comply until 1975. Even then, they imposed eligibility criteria leaving more than 80

percent of the employees without coverage. This is the situation today, a blatant injustice that can and must be corrected.

The vehicle to accomplish the aforementioned would be the utilization of language contained in section 207, subsection (c) of the Murphy bill, which adequately interprets the subject provisions of the treaty and provides for just and equitable recognition of the many years of dedicated service of this group of employees that have been, up to the present, dealt with as though they were the black sheep among all U.S. Government Federal employees in the Republic of Panama.

All efforts should be exercised to insure that language of the Murphy bill in section 207 be used in whichever bill is finally enacted by Congress.

It is necessary to point out that we have tried for many years, unsuccessfully, due to hardcore opposition of local administrators, to include this considerable number of employees in the social security system of Panama. The stipulations in annex C of the agreement in implementation of article IV of the treaty was considered to be a major gain for the affected employees.

The history of Panama Canal construction was written with the workers' blood. Its efficiency throughout the past 64 years and its contribution to contemporary civilization is the product of dedication and laborious efforts on the part of workers who toiled, sometimes under severely unfavorable conditions.

Members of the subcommittee, let us assure you that continued efficient operation of the Panama Canal depends primarily on the existence of the work force satisfied with acceptable working conditions who feel secure and protected in their jobs. Above all, that their rights and benefits are respected and that the commitment made by the Governments of the United States and Panama during treaty negotiations, to respect such rights, be fulfilled.

Sections 324 of the administration bill and 124 of the Murphy bill provide for the payment of an allowance to offset the increased cost of living which will result from withdrawal of eligibility of employees to use military postal services, sales stores, and exchange facilities 5 years after entry into force of the treaty.

This provision is applicable only to U.S. citizens employed with the Panama Canal Commission. We believe it is highly discriminatory not to grant similar benefits to non-U.S. citizens employed with the Panama Canal Commission.

We believe it is highly discriminatory not to grant similar benefits to non-U.S. citizens who will lose purchasing and duty-free entry privileges on October 1, 1979, and, as a result, will suffer a loss in buying power and a lowering in their standard of living. We request that this group of employees also be provided with an allowance to offset the inevitable increased cost of living.

We hold the multiple wage system now prevalent among U.S. Government agencies in the Republic of Panama to be the most accentuated form of discriminatory practice. Since the end of the 19th century when the Panama Railroad was under construction and up to the present the canal non-U.S. citizen work force has been the victim of wage systems and practices that are woefully discriminatory.

Paragraph No. 1 of the 1955 Memorandum of Understanding between Panama and the United States attempted to correct this situation. At least, that is what we were led to believe.

However, Public Law 85-550 of July 1958, in implementing the provisions of said memorandum, failed to capture its spirit and intent, creating a multiple wage system in the canal area which may be highly sophisticated but is certainly most unequal and unjust. The existence of the U.S. wage base versus the Canal Zone wage base systems and the application of a tax pay factor, reducing non-U.S. citizen employees' salaries, instead of adding to that of U.S. employees as was, it seems to us, the intent of the 1955 Memorandum of Understanding, is a glaring example of the inequities that concern us.

Meanwhile, instead of progressive action to correct this malady, U.S. agencies on the isthmus have officially announced their intention to introduce a locality rate wage program applicable to employees hired after October 1, 1979, compounding instead of correcting an evil of the past. This proposal is inconsistent with the rules of fair play and justice which have placed your Nation in the vanguard of international greatness.

It is inconsistent with the policies of respect toward the individual and his inherent rights. It reduces the concept of equal pay for equal work to a mere myth and above all it will constitute, if implemented, a very serious obstacle to the continued efficient operation of the Panama Canal.

We therefore urge this subcommittee to consider supporting our bid for full scope collective bargaining, including wage bargaining—please see item 2—so that labor and management may be able to meet around the bargaining table, conducting free labor-management negotiations and, as equals, come up with true wage parity in accordance with justice and the spirit of paragraph 6, article X, which states:

With regards to wages and fringe benefits there should be no discrimination on the basis of nationality, sex or race.

Any attempt to sanction continued wage disparity, through legislation or otherwise, can only result in keeping that cancerous sore of wage discrimination alive with all its attendant negative consequences.

Section 328 of the administration bill and 127 of the Murphy bill exclude non-U.S. citizens hired after 30 September 1979 from U.S. Government sponsored group life insurance (FEGLI). This has come about due to their anticipated coverage under the Panama Social Security System. However, Panama social security does not provide life insurance coverage. As a result these new employees will be deprived of a basic benefit that can have a far-reaching effect on their families. Since the apparent intention was to avoid duplicating the benefits offered by the Panamanian Social Security Agency, FEGLI should be offered to all new employees.

Paragraph 3(b) of article X of the new treaty provides for the establishment of training programs for Panamanian employees and apprentices in order to increase the quantity of Panamanian employees that are qualified to occupy positions with the Commission, as they become available.

To the best of our knowledge, there are no provisions in either legislative proposals to implement the aforementioned.

Section 154 of title 2 of the Canal Zone Code which refers to training in the Panama Canal Company/Government has not been amended to conform with the new requirement.

We request that the proposed legislation be amended to comply with requirements stated in the treaty. In addition, we suggest that said amendment should include the establishment of a special office or division to administer and monitor such training programs as may be required, given the vital importance of this issue for the United States, Panama and the users of the canal.

AFSCME recognizes the difficulties ahead of all of us in obtaining passage of the early option retirement feature as proposed by the Panama Canal Administration because of the many fiscal and inflationary problems facing the Congress today.

However, we wish to go on record supporting passage of this portion of the legislation as an item absolutely necessary for the smooth and orderly transition of the Panama Canal to the Republic of Panama in the year 2000 and its continued efficient operation thereafter.

We further support the view that general funds be used for this purpose rather than placing said burden on the U.S. Federal retirement fund.

The Panama Canal Treaty of 1977 calls for the Republic of Panama to assume plenary jurisdiction over the canal area on October 1, 1979 and total operational responsibility on December 31, 1999. Right or wrong, U.S. citizens have held the key and skilled positions in this utility since the Panama Canal was opened to world commerce in 1914.

Today, this leaves the Republic of Panama in a position of having to train its own nationals in the canal's many faceted operations before they will be able to assume full operational responsibility and run the Panama Canal smoothly and without chaos.

This, members of the Panama Canal Subcommittee, is a time-consuming process in which the present operating personnel should be retained to train their own replacements, while at the same time maintaining the high standards and efficiency for which the Panama Canal has become world famous.

How is this to be done if the needed people must worry about their future, raising their families with some semblance of security and stability and making a new start when each day they become older and that new start becomes more difficult? It is done by giving incentives to stay on.

The most important of these incentives is early optional retirement.

Consider also that the purpose of the Panama Canal Treaty is to turn the Panama Canal, the actual waterway, over to Panama. The employment situation will then change from a mixture of U.S. and Panamanian employees to all Panamanian. This will be done in increments over the next 20 years.

It will not nor can it be done all at one time. Continuity of operation must be maintained throughout this period. The incentives to stay must be there.

Consequently, to make sure early optional retirement becomes a legislative reality, AFSCME and its Panama affiliates hold that the cost of early optional retirement be borne by the U.S. general fund rather than the U.S. Federal retirement fund.

We bring to your attention the fact that U.S. citizens employed with U.S. Federal agencies in the Republic of Panama have been paying income taxes to the U.S. Federal Government since 1952.

Not one cent of these tax contributions has been returned to this region to defray the cost of public services.

Those costs have been charged to general operations of the Panama Canal administration, meaning funds for those purposes are coming from Panama Canal tolls and other moneymaking activities conducted by the administration.

On the other hand, non-U.S. citizen employees have been paying taxes to the Panamanian Government since 1956. These tax contributions form part of the nation's general fund which help to provide public services for the citizenry, Canal Zone workers residing in the Republic and all others who come to Panama as visitors, as is the case of Canal Zone U.S. and non-U.S. citizen residents, plus people in your category as our distinguished guests.

Consequently, since non-citizen employees' taxes are being used for public services, there is no reason under the sun why early optional retirement benefits should not be charged to the U.S. general fund.

We have not been able to obtain exact information as to the amount of taxes contributed by U.S. citizen employees to the U.S. Treasury, but a rough estimate would indicate that some \$25 million were paid in 1978.

Non-U.S. citizens contribute roughly \$15 million a year to the Panama Treasury. These figures are strictly based on guesswork, since both governments claimed they could not release exact figures, just like that, and we did not have the time to get them through formal channels.

If early optional retirement benefits are estimated to cost around \$8 to \$10 million annually, it seems very obvious that a lot of tax dollars are available to finance same, meaning Canal Zone workers, as usual, will be paying for their own benefits and not begging anyone for anything.

AFSCME and its Panama affiliates further contend that all other operational costs of the Panama Canal Commission must be borne primarily through periodic adjustments of Panama Canal tolls, not from either the United States or Panama Treasury and certainly not out of Canal Zone workers' pockets.

We look very lightly on threats and insinuations about ships "going elsewhere" if tolls are adjusted upwardly. The same argument was used in the Suez Canal. Yet, Egyptian President Anwar el Sadat increased Suez Canal tolls more than 100 percent. Today, more ships transit the Suez Canal than ever before.

AFSCME and its Panama affiliates hold that several thousand loyal Company-Government employees are being ordered to make crucial decisions regarding their future without the benefit of knowing what will emerge in this treaty implementing legislation now being considered by this subcommittee.

If the Panama Canal Administration does not know what to expect, how in the name of heaven can any employer expect employees to know?

Some workers have received a 14-page personnel action notice, so loaded with "ifs" and uncertainties that they are totally baffled as to how to act, while union leaders are in no more an advantageous position to properly advise union members.

We urge this subcommittee to call on the Panama Canal Administration to cease and desist from issuing notices or placing those already issued into effect until the U.S. Congress stamps its approval on treaty implementing legislation.

We cannot conceive of any fairer, decent way to treat loyal employees of the U.S. Government. Please let them know what you have in mind for them, enact the legislation, and then ask them to make that crucial decision which will affect the employee and his or her family.

In conclusion, we strongly urge you to comprehensively examine and take into account the recommendations set forth in this presentation as you deliberate and decide on this all important issue. They are the true concerns of the vast majority of the Panama area work force.

We thank you.

[Part of the submission follows; the remainder was placed in the files of the subcommittee:]

Subject: Application of Single Wage Provisions to Nonappropriated Fund Activities.
DA, TAGO, Washington 25, D.C., 24 January 1958.

To: Commander in Chief, Caribbean, Quarry Heights, Canal Zone.

1. This is an executive agency communication.
2. So much of Item 1 of the Memorandum of Understandings Reached Between the United States and the Republic of Panama as requires each agency of the United States Government in the Canal Zone to conform its wage practices in the Zone is, as a matter of policy, to be considered as applicable to nonappropriated fund activities established by Army, Navy, and Air Force Regulations. Such provisions of Item 1 include a basic wage for any given wage level, authorization for oversea wage differential for United States citizens, the evaluation, classification and titling of all positions in the Canal Zone without regard to nationality of the incumbents, and opportunity to participate in training programs. These provisions of Item 1 will be implemented by appropriate administrative action. It is desired that the needs of nonappropriated fund activities with respect to job structure and job pricing be considered and that your Headquarters propose an appropriate amendment to the Canal Zone Job Evaluation and Pay Plans dated 15 April 1957.
3. It is further desired, as a matter of policy, that retirement benefits available to United States nationals employed by such activities in the Canal Zone, be uniformly extended to Panamanian citizens employed by nonappropriated fund activities. Such action is consistent with the overall purpose and spirit of the 1955 Treaty objectives. Commercial contributory retirement annuity contracts already in effect for United States citizen employees of nonappropriated fund activities in the Canal Zone will be extended insofar as is feasible, to uniformly cover United States and Republic of Panama citizens employed by nonappropriated fund activities. New contracts required to provide retirement benefits will be entered into subject to approval of the appropriate Department.
4. The actions hereby authorized and directed will not be implemented before the enactment and implementation of legislation required by the Memorandum of Understandings as applicable to United States Government employees compensated from appropriated funds.

HERBERT M. JONES,
Major General, USA,
The Adjutant General.

Mr. MURPHY. Thank you, Mr. Maugé. and you may be sure that this committee is here for the very purpose of gathering all of the

facts, particularly the uncertainties and deep concerns of both the American and Panamanian workers, so when we go back we can write a piece of legislation as timely as possible and pass it so Governor Parfitt, General McAuliffe, and the Panamanian officials will have time before October 1 to integrate and clear up many of the deep concerns you have raised in your very, comprehensive paper.

Mr. MAUGÉ. Thank you.

Mr. MURPHY. Mr. Bonior?

Mr. BONIOR. I would just like to compliment Mr. Maugé and the gentlemen who are with him who offered, as you indicated, a very comprehensive statement.

It was very well put, rational, and it was excellent on the points you made. It was very specific and from my own personal standpoint I thought it was enlightening and interesting, and we will consider it in our deliberations, which hopefully will be on those points you talk about which are to be certainties one way or the other.

Thank you.

Mr. MAUGÉ. We want to thank you, but we would like to tell you we are No. 1.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Wyatt?

Mr. WYATT. No questions, Mr. Chairman.

Mr. MURPHY. Mr. Lent?

Mr. LENT. I have no questions.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. No questions.

Mr. MURPHY. Mr. Carney?

Mr. CARNEY. No questions.

Mr. MURPHY. Governor Evans?

Mr. EVANS. No questions.

Mr. MURPHY. I want to thank Mr. Sinclair, who has been coming here for 17 years and appearing before the committees.

Mr. SINCLAIR. I have a few things to say, as usual.

Mr. MURPHY. I didn't think you would give up the opportunity.

Mr. SINCLAIR. I feel very happy that we were able to answer all of your questions. In fact, it is the first time I have been before one of your committees, and everybody has said "we agree with you"; and I hope you agree with us.

I want to say, we appeared here last week, sat before the subcommittee of the House Post Office and Civil Service Committee; and at that time we discussed this question on labor/management relations, and we were very happy to hear the Congressman from California, Charles Wilson, who brought out the possibility that maybe what could be used here could be a collective bargaining system similar to that of the U.S. Postal Service.

I will not repeat here what I told Congressman Wilson that time. It was very nice, I can assure you; but I would like you take that into consideration, because we are very, very concerned about true collective bargaining. We feel that we are the ones—and we have here two Panamanians sitting next to me—we are the ones who are concerned about what will happen after October 1. All we want

you to do is provide us the same as you have, "something to do about your wages and your fringe benefits in Congress."

We want to have that right to sit down and exchange arguments, so we can participate in the wage setting situation involving our members. We can just not conceive—we just cannot believe—that it is fair for our union to sit here and have somebody say we have met in a smoke-filled room and decided you should have this, because this is what you are supposed to have to live on, and eat, and so forth. That is what we can't get along with.

The next question—the lady from Colorado, Patricia Schroeder, in her questioning, she said, "Well, supposing we strike out this whole question on legislation, on labor/management relations, and we leave it to your people?" We said, "Fine, we will take our chances." And we want to repeat to you here that the American Federation of State, County, and Municipal Employees, AFL-CIO, and our Panamanian affiliates, Locals 900 and 907, have confidence in our ability to negotiate, in our ability to stand before any rank or level of management, around any table. We can assure you that we will not come out second.

So we are saying that if you want to help us, really, leave that thing out; let us fight it out with the administrators here; and I am sure that when we get through we will have something that will avoid what a lot of people are scared about—people leaving town and so on.

We also want to tell you something: I can't resist, frankly; I just couldn't, I could not resist leaving this hearing without saying to you that I am amazed, I am appalled, at witnesses coming before this committee and saying that firefighters and others should not have their salary and so on paid by the shipping companies.

We have been told here over the years by the Panama Canal administration that if the cost of firefighting was to be considered, it would be cheaper to let the houses burn down; just make sure the others do not catch fire. But life, you see, human life is something very important, which we agree with; and, second, the shipping industry, those firefighters are kept here to put out fires on ships, and that's where most of the firefighters in the Canal Zone have been injured, fighting fires on ships; and to have somebody say, "To hell with the firefighters," I just don't understand this.

The next question, that bridge across the canal contributes to the value of the canal too. Why in the name of God, why can't we have a bridge across the canal, to have somebody get from one side to the other? I think they should pay for it, and they should continue paying for it. So we want to go on record here saying these things, every expense in this canal, should be borne by the shipping industry, not from Canal Zone workers' pockets, and that's one thing you will find our international union supporting. We will fight from here to heaven and back; but we don't think this canal should be paid for either by U.S. citizens, Panamanian citizens, nor the workers. Let the users pay for it, and that's something we want to make very, very clear.

The last question, Mr. Chairman: Something that is going to cause some problem here: We cannot seem to get any sensible interpretation from anybody. We have been hearing about this canal area being left in limbo. One day, depending upon how the

wind is blowing, it is the United States; the next day, depending upon how the wind is blowing, it is Panama. And to give you just one good example here. This 14-page document we referred to in our statement, on page 8 it says:

In general, the same Federal laws presently applicable to us as a Federal employee will continue to be applied in the DOD agency in determining your compensation. This includes overtime pay, holiday pay, any differential Sunday pay, annual premium compensation.

But then it goes on to say, "However, the minimum wage and overtime provisions of the Fair Labor Standards Act may no longer be applicable."

Well, the question is, what are you doing? You are telling us that Federal law applies; you can be clobbered and murdered under Federal laws, not murdered but put into jail. But on the other hand this benefits us now, a law we fought for, when this union, first—in 1959, went before your Congress and got the Federal Salary and Pay Act established in the Canal Zone. The first time this union went before your committee in 1966 we fought off the shipping industry.

Also, we did want the minimum wage. We wanted to get Federal salaries and wages established here. We went before your Congress time and again to have the amendment applied to us, long before the treaty was signed.

As far as we are concerned, this is a contractual agreement. I know you are telling us—not you—the people are telling us, "the law applies, because it affects you in one respect, but now the minimum wage is there, we won't give that to you."

So my question is, when it suits management, Federal laws apply; when it may help the employees, it doesn't apply.

Well, if that is not straightened out, and this labor situation exists, we are going to have problems, and that's all I have to say, Mr. Chairman, and I am very sorry I had to express my views the way I did on shipping, industry, but I had to.

Mr. MURPHY. Mr. Anderson?

Mr. ANDERSON. I, sir, want to support the statements made by Mr. Sinclair and Mr. Maugé. I am a local computer clerk.

Mr. MURPHY. Thank you, gentlemen.

Mr. SINCLAIR. Thank you.

Mr. MURPHY. Our concluding witness this morning will be Mr. William Drummond, president, Canal Zone Police Lodge, AFGE Lodge 1896. Appearing with Mr. Drummond is Ricardo R. Royo, second vice president, and Victor E. Joseph, secretary-treasurer, of the union.

If you will proceed, Mr. Drummond.

STATEMENT OF WILLIAM R. DRUMMOND, PRESIDENT, CANAL ZONE POLICE UNION, AFGE LODGE, LOCAL 1896, ACCOMPANIED BY RICARDO R. ROYO, SECOND VICE PRESIDENT; AND VICTOR E. JOSEPH, SECRETARY-TREASURER

Mr. DRUMMOND. Mr. Chairman and members of the subcommittee, we would like to thank you for allowing us to testify here before you today. We would also like to extend our appreciation and welcome you to the Canal Zone.

Had you restricted your hearings to the United States, it is doubtful that this union would have been able to testify with the financial problems.

I would like to, if I may, since you have already introduced them, I would like to introduce them again: Ricardo Royo, my second vice president; and Victor Joseph is my secretary-treasurer. They have been employees of the Police Division—Mr. Joseph for approximately 7 years, and Mr. Royo for approximately 22 years—within the agency; and they have fairly extensive Federal employment history.

Myself, I have been a policeman for about 15 years, and I have approximately 22 or 23 years of Federal service.

If I could, I would like to deviate from the written testimony here, so I can emphasize certain points that we have brought out in our testimony.

Mr. MURPHY. We will place your entire statement in the record at this point, and if you would proceed.

[The information follows:]

TESTIMONY GIVEN BY CANAL ZONE POLICE UNION LOCAL 1798, A.F.G.E. TO HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE ON IMPLEMENTING LEGISLATION FOR 1977 TREATY WITH REPUBLIC OF PANAMA AND THE UNITED STATES

Mr. Chairman, members of the subcommittee, my name is William R. Drummond. I am President of the Canal Zone Police Union, Local 1798, A.F.G.E. The gentlemen beside me are Eugene Johnson, First-Vice President; Ricardo R. Royo, Second Vice-President, and Victor E. Joseph, Secretary/Treasurer of this union. We all extend our appreciation for being offered this opportunity to present our views here today.

We have studied the two bills presented to the Congress to implement the Panama Canal Treaty of 1977. Although both bills are very similar in respect to many issues: The so-called administration bill is by far the least protective to the Panamanian and U.S. public and their respective governments.

We therefore, for what it is worth, support the passage of the so-called Murphy bill. In our opinion, this bill presents the proper incentives for fiscal responsibility that is needed to protect the interest of the United States within the next 20 years, and an administrative model for Panama to inherit in the year 2000.

There are however, certain aspects to this bill as well as the administrative bill that has marked weaknesses in the projected administration of the canal. In order to recognize these weaknesses one must have lived and worked in the Canal Zone, or must have been a keen observer of the so-called Canal Zone merit system enacted by the Congress in 1958, pursuant to the 1955 Remon-Eisenhower treaty.

Like the present legislation before us today, the 1958 legislation was put forth in good faith to solve much of the economic, political, and fiscal complaints aired by the Government of Panama. We believe that it was an excellent piece of legislation that failed to resolve these complaints for the same reason that this present legislation will fail to resolve the present almost identical problems.

There was not put into this present legislation, nor the 1958 legislation, the necessary incentives to make the projected system work administratively. It will not work simply because too much of this bill is permissive, leaving to the administrator to effect that which the Congress had intended. The Congress has always presumed that the canal administration will act in good faith. The last 20 years under the Canal Zone merit system, is a clear example that this presumption has been found lacking.

Let me give you just a few examples that may be converted into wasted dollars for the U.S. taxpayer. For at least the last 20 years, the Canal Zone Police Division has presumably been training new employees to become competent police officers. Contrary to law and the agency's own regulation, they have been doing this without the benefit of any definitive written policies, procedures or standards in which to effectively evaluate these employees. They hire and fire employees on the sole basis of whim or personality. The agency's only assurance that these employees have the potential to perform their function is through the entrance examination. They have no assurance that those employees released were released for cause, for the simple

reason that the police division has solicited, encouraged and formulated false and/or misleading adverse trial period reports against these employees. For the most part, those that do pass their one year trial period, do so simply by staying out of sight and/or ingratiating themselves with their supervisors or by having personal contacts with high officials throughout the agency on good terms with the chief or civil affairs director or their subordinates.

After 20 years, the Canal Zone Police Division has no labor-relations policy. Not only do they counsel probationary employees not to join or affiliate with this union, as a condition of future retention, but they also make it clear to these and tenured employees not to join, affiliate or become active union members as a condition of promotion and selection for schooling. My past union secretary/treasurer was passed over for promotion at least five times before he finally got smart and resigned his position, to be promoted soon thereafter. For the past 15 years, the Police Division did everything in their power to keep the Panamanian employees out of the promotion and selection system. Only one U.S. black in the last 20 years has ever been promoted. It has only been in the last 7 to 10 years that they have even been hired as police employees, and then only because they were veterans. Women hired recently within the last 3 to 5 years, are terminated during their probationary period simply because they look or act too much like women. Even the Civil Service Disability and Workmen's Compensation Act is violated and all under the present Canal Zone Merit System regulations. I have enclosed several more recent documented cases in order to substantiate the above statements. For the most part, these cases have been brought to the attention of the responsible officials within the agency and essentially ignored or side-stepped.

For the past six to seven years, I personally have been presenting these type problems to the attention of the agency, and for the most part I have been ignored.

It has been my experience, as I frequently represent other employees in other units of the company/government, that these problems also exist throughout the company/government to one degree or the other. In short it is systematic most especially at the division and lower unit levels.

I am soliciting the members of this committee to help those employees in the cases that I have presented, but most importantly, I wish to show by examples that the Canal Zone merit system has been 20 years of administrative failure, because the original legislation that brought it into being relied on the premise that the Canal Administrator would act in good faith and carry forward that which the Congress intended.

The language implementing the Canal Zone merit system was too permissive in nature. This present language in these two bills is also, we believe, too permissive in nature. If left unchanged, you will be plagued with labor discontent and work stoppages regardless of what collective bargaining program is finally instituted. The worst thing that could happen to this canal is to carry forward, as contemplated, the present Panama Canal personnel manual regulations as the basis in which to administer the new commission employees.

In respect to the retirement legislation written in both bills, this union is in full support, not because we will benefit from it, and we will, but because it meets that incentive which is needed to keep skilled employees working in Panama for the next five or ten years or until they have been able to train their replacements. It is not out of a pleading for fairness or merit that I ask for your support on this issue but out of simple economics. It is far cheaper to use a skilled in-place workforce to train their replacements, than it is to replace a significant portion of that workforce with others that will surely be unfamiliar with the specialization of running the canal. It is out of fairness and merit that I request that you amend the special immigration portion of the bill adopted to include transfers rights to other Federal agencies within the United States. I am aware that this right has been given to Vietnam immigrants, I have no doubt that it has also been given to Cubans as well as many other nationals that meet certain skill or language needs of the United States. I doubt that 10% of the present work-force would take advantage of this right given a time limit in which to act. Panamanians, like U.S. citizens, regardless of the economic conditions, still prefer to live in their own country.

There are, however, certain Panamanians living and working in the canal, who have a justifiable and necessary need to immigrate to the United States. Their leaving would also serve the best interests of the Panamanian and U.S. Governments. They are only asking that they not be thrown out into the cold, after their services have been used in the interest of the United States. They wish to continue their service with the U.S. Government in a meaningful way and not be subjected to the relief or unemployment so common to newly immigrated nationals that enter the U.S. from other countries.

Another area that needs to be addressed is the employee civil protections during the transition period. The agency contemplates expanding the Canal Zone police liaison unit in order to deal with this matter.

Through extensive experience over the last several years, I can safely state that an expansion of this unit cannot and will not give these employees the protections intended or expected. The present purpose of the liaison unit is to work with, and gain good relations with the Panama National Guard, it is not now nor has it ever functioned as an ombudsman unit for the canal employees. It is an investigative unit subject to the particular politics of this area. For example, in the last several years, this agency has not presented a single human rights case, real or imagined, that was not first exposed to the Congress by this union. There has not been one human rights violation example given to this committee today covering the last 12 months. Surely this committee is aware that these problems still exist. An ombudsman with congressional access and overall oversight is what is needed to assure these employees that they will be fairly treated when confronted by the Panama justice system.

In closing, Mr. Chairman, this union has done its best to present views that are only constructive and, under the circumstances, in the best interest of the United States and the Republic of Panama. The Congress of the United States need only adopt these views and they may be assured of a reasonably efficient running canal.

We will be glad to answer any of your questions regarding this presentation.

[Extensive additional material was submitted by the witness and is available in the files of the subcommittee.]

Mr. DRUMMOND. In respect to the position of this union, we have for a number of years been opposed to the treaty, adamantly. As Mr. Carney has stated, that's water over the dam. We now have somewhat of a disinterested part to play in formulating or helping the committee to formulate what should be, or should not be, the implementing legislation.

This union will not be greatly affected by whatever comes out of the implementing legislation. There are probably 10 to 15 percent of the work force of the Police Division that would benefit from any early retirement package. It does not mean we are not interested, but it does indicate what part of the union would benefit.

We have—in respect to U.S. employees in the Police Division—a fairly reasonable transfer right given by the Office of Personnel Management and essentially it would give these employees that cannot reach this retirement level rights to transfer priority placement; and I would like to introduce this into the record so the committee could see it.

Mr. MURPHY. It will be included at the conclusion of your remarks, without objection.

Mr. DRUMMOND. This particular priority placement package would give most police employees that right to transfer to the States, to some type of vocation similar to what they have here, as U.S. employees, U.S. employees, not Panamanian employees.

We have approximately 50 Panamanian employees on the police force. I mentioned Mr. Royo having some 22 years Federal service; and probably 15 years of that is with the Police Division, from 1964 or thereabout. We have most of our Panamanian employees that came on in 1964. We worked for the Police Division, enforcing U.S. law. Some of them have come to the attention of various officials in the Panamanian Government, and in adverse situations. As a result, they have a need in certain circumstances to want to leave the area and emigrate to the United States. I don't know whether they would take this option or not. Some I know will, but how many, I feel less than 10 percent of that particular work force,

which is probably around 5, 10, 15, or 20 people. That is just in the police force alone that I am speaking of.

And this is the only issue that I bring out on the merit or reasonableness of the transfer to a Federal police force.

Now I mention in my statement that I am aware that the Vietnamese have been given this right. I believe it was in 1976 there was an appropriation bill made to that particular effect. I know that the Comptroller General has ruled on it, in favor of having the opportunity to transfer. I would assume, and this I don't know, but Cubans and other nationalities have been caught in a human rights situation and would be given some right to go into the work force if they show a particular skill or language that the U.S. Government would need.

The other factor I would like to bring out—and I believe it to be a fundamental problem with the legislation—we support H.R. 111 in its fiscal oversight of the canal. I think it carries forward that protection for the taxpayers of the United States and the Republic of Panama that's needed in the next 20 years. It has oversight; it has restrictions on what can and what cannot be done. It has congressional oversight and, hopefully, each year there will be hearings to make sure that the system does not break down, that it does carry forth that administrative oversight you need to jell them both or bring them both together.

Now, you probably heard here—I know in a number of witnesses' statements—that they have to have collective bargaining, and if they don't, there is going to be disruption of the work force. Now this is the implication, whether it is said in that context or not, and I believe that to be true. You have to have this if you want the stability of the work force; you have to have some system, whatever it is—and we are not saying that title VII should be that system—or an individual collective bargaining system other than title VII, or a combination of the two.

What we are saying is, you should have a system set up whereby, administratively, regulations can be enforced; and this is what is not in the bill; it is too permissive. There are too many "maybes," too many "generally the same as."

Now this is the problem that happened in the 1958 legislation; it was "again" in nature. Now this committee probably more than any other committee in the United States has addressed this problem extensively. There is, to support my allegation or supposition or whatever you want to call it, hearings held—I think it was by GAO in 1975 or 1976—they made a study of the administrative regulations dealing with the 1958 legislation and analyzed the faults.

The Department of the Army in 1973 or 1974 had a contract with Mr. Peter Pestillo to do just that also. His findings would be in the records of this committee. It was not very conclusive to this particular union in respect to our actions, but he did make a fairly good analysis of the problems; and we have done the same thing here today, through documentation, in a general sense. We have said that this system has broken down, that the agency for the last 20 years ignored their own regulations, or changed those regulations so that the employee does not have the confidence in that system that's needed to keep that work force stable.

To give you an example, in 1976—we have a grievance system which says generally that the employee will be able to bring forth his complaints and he will get them adjudicated at an unbiased hearings. Now that's generally what it says—in 1976 the agency changed that to—the personnel director can decide whether the employee has a grievance or not. What they have done is short-circuited the grievance system. You are complaining against the agency and the agency is going to determine whether or not you have a grievance. The employee will not ever have faith in a system whereby he does not have an outside examination of his complaint, whether it is valid or invalid.

Unfair labor practices are another issue. Now here the agency—I am alleging—is ignoring their own regulations. When I put in for a complaint against the agency, unfair labor practices, I don't want the agency to turn around and tell me, "Your unfair labor practice charge is invalid; therefore we will not consider it."

Now the agency's regulations that the Governor-President will select an examiner or group of examiners to adjudicate this, he will not dump it back into the personnel director's office and have the personnel director tell me, "We will not consider it."

All of these problems are, in essence, the agency's regulations, and I am saying that if you take this package, or personnel manual regulations, and you transfer them to the Commission, you are going to have problems; you are going to be beset by problems.

The agency has an analysis here of the 1976 so-called sick-out, rather extensive analysis. I believe it to be faulty, but at least it is something the agency has done; they have analyzed what the problem is and how to avoid it in the future.

I think that this committee in their formulating whatever regulations they deem it proper, should take a close look at this and, therefore, I would also like to bring this, and present it into evidence, if the committee does not already have a copy of it.

In respect to the retirement package, it is an enormous amount of money. In 1958 the Panamanian employee was brought into the civil service employment system. Now where else in the world that I know of has this occurred? It did it in 1958 because of an international agreement with the Republic of Panama; good, bad, or otherwise, every Panamanian employee would be covered under the civil service retirement system.

I believe—but I am not sure exactly—what the figure cost of this was, it was either \$30 million or it was \$300 million; I believe it was \$300 million, but I don't have the hearing reports on it. It is on file in this committee in Washington, D.C.; it is a red book with all of the testimony given by all of the employees in the Canal Zone at that time, both here and in Washington, D.C. It was done by the Post Office, Civil Service Committee; it is Public Law 85-550.

The agency paid for this inclusion of Panamanians over a 20-year period.

[The material referred to earlier by the witness is included at this point:]

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.8

UNITED STATES GOVERNMENT

Memorandum

TO : Heads of bureaus, divisions and independent units DATE: January 30, 1979

FROM : Acting Personnel Director

SUBJECT: Placement Assistance for Panama Canal Zone Employees

1. The Office of Personnel Management (OPM) is responsible for developing and administering a Federal Government-wide placement program for U.S. citizen employees of U.S. Government agencies in the Canal Zone who are displaced from employment as a direct result of implementation of the Treaty. It would also apply to employees of the Panama Canal Company/ Canal Zone Government who wish to obtain other Federal employment in the United States even though they are not scheduled for separation.

2. This special placement assistance program has now been developed by OPM and will become operational on April 1, 1979. The details of the program are contained in the attached OPM Operations Letter 330-198 dated January 25, 1979. Following is a synopsis of the major features of this program:

a. The Office of Personnel Management has established two placement priority levels for Canal Zone employees:

(1) Priority level 1, consisting of those U.S. citizen employees of the Panama Canal Company, the Canal Zone Government, and other Federal agencies in the Canal Zone who are involuntarily separated as a direct result of implementation of the Treaty.

(2) Priority level 2, consisting of U.S. citizen employees of the Panama Canal Company or Canal Zone Government who wish to obtain other Federal employment in the United States even though they are not scheduled for separation.

b. Except under those special circumstances listed in OPM Operations Letter 330-198, a Federal agency in the U.S. must select a priority level 1 employee, if available, before filling the positions by any other means. When priority level 2 employees are available, an agency must select one of these employees before selecting applicants by appointment from civil service registers, transfers, reinstatement, or under those special circumstances previously mentioned as exceptions to priority level 1 selections.

c. All eligible Canal Zone employees may register for up to five occupational categories for which they qualify at the grade which they held and any lower grades which they are willing to accept. They may register for assistance in any two OPM regions or one region and Washington, D.C., except that a regional director or the Manager, Washington Area Officer,

PR

January 30, 1979

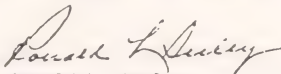
Subject: Placement Assistance for Panama Canal Zone Employees

may accept employees for registration even if they are already registered in two regions, if the employees are encountering unusual placement difficulties.

d. Priority level 1 employees may register for placement assistance at any time following receipt of their separation notice but no later than 90 days after the effective date of their separation. Priority level 2 employees may register for placement assistance at any time within five years after April 1, 1979. Employees registered for special placement assistance may remain in the program for up to one year from the date of their registration or separation, whichever is later. Employees will be removed from the program if:

- (1) They accept a continuing position in the Federal Government; or
- (2) decline an offer which they previously indicated would be acceptable.

3. The Personnel Bureau has established a Special Placement Office at the Panama Canal Training Center to assist employees eligible to participate in the OPM placement program. Any questions concerning the program, including the requirements and means of registering for placement assistance, should be directed to Mr. George A. Mercier, Building 0602 (telephone: 52-7872 or 3538).


Ronald L. Seeley

Enclosure

Distribution B (175)

Operations Letter

Letter No. 330-198

Washington, D. C. 20415

January 25, 1979

SUBJECT: Placement Assistance for Panama Canal Zone Employees

Background

1. The Panama Canal Treaty of 1977 states that it is the policy of the United States Government that U.S. citizens who were employed by the Panama Canal Company or Canal Zone Government prior to entry into force of the Treaty and who are displaced from employment as a direct result of implementation of the Treaty will be provided maximum possible placement assistance. Similar placement assistance will also be provided to employees of other U.S. Government agencies in the Canal Zone who are involuntarily separated as a result of treaty implementation. In addition, special placement assistance will be extended to U.S. citizen employees of the Panama Canal Company or Canal Zone Government who desire other Federal employment in the United States.

2. In carrying out these provisions of the Treaty and national policy, the Office of Personnel Management (OPM) is charged with the responsibility for developing and administering a Federal Government-wide placement program for all eligible employees who request placement assistance. The purpose of this letter, therefore, is to explain the placement assistance program which the OPM has developed. The hiring restrictions outlined in this letter generally become effective April 1, 1979, and specifically when an area office informs agencies that Canal Zone employees are available for employment for positions agencies wish to fill. This program is being announced to agencies by FPM Letter 330-12.

Placement Priority Levels

3. The Office has established two placement priority levels for Canal Zone employees: Priority level 1 freezes the filling of vacancies in a geographic area by any means except as noted below. Priority level 2 freezes the filling of vacancies in a geographic area by appointment from outside the agencies, other than reinstatement or transfer of a Federal employee through an established agency priority placement program. Priority level 1 consists of those U.S. citizen employees of the Panama Canal Company, the Canal Zone Government, and other Federal agencies in the Canal Zone who are involuntarily separated as a direct result of implementation of the Treaty. Priority level 2 consists of U.S. citizen employees of the Panama Canal Company or Canal Zone Government who wish to obtain other Federal employment in the United States even though they are not scheduled for separation.

4. When priority level 1 employees are available for a position, an agency must select one of these employees before filling the position by any means except: (1) career promotions and similar actions; (2) actions involving exercise of reemployment rights; (3) reassignment of employees subject to downgrading caused by reclassification because of error or classification standards change; (4) reassignment of employees found physically disabled for current positions; (5) repromotion of employees involuntarily downgraded without personal cause; (6) reassignment or demotion of employees to satisfy reduction-in-force rights; and (7) reassignment, demotion, transfer or reinstatement of employees scheduled for separation or separated by reduction in force, or scheduled for separation or separated after declining to transfer with their functions outside the commuting

Inquiries: Staffing Services, 632-4533

Code: 330, Recruitment, Selection, and Placement (General)

Distribution: FPM

Letter Expires: January 20, 1980

OPM OL 330- (2)

area. When priority level 2 employees are available, an agency must select one of these employees before selecting applicants by appointment from civil service registers, transfers, or reinstatement, except that, where applicable, the exceptions stated above would apply. Priority level 1 employees must be selected ahead of priority level 2 employees.

Eligibility for the Program

5. To be eligible for the program, an employee must either: (1) be in tenure group I or II in the competitive service; (2) be in tenure group I or II in the excepted service and have competitive status; or (3) be in tenure group I or II in the Canal Zone merit system or its successor. (The 1-year service requirement for the noncompetitive transfer or reinstatement of Canal Zone merit system employees which is contained in sections 6-2 and 6-3 of FPM chapter 315 is waived for Canal Zone employees who are eligible for the special placement assistance program.) Employees who decline an equivalent offer to their current position made by an agency located in the Canal Zone may not be given priority level 1 consideration although they may still be eligible for priority level 2 consideration if they meet the requirements described in paragraph 3 above.

6. Employees registered for special placement assistance may remain in the program for up to 1 year from the date of their registration or separation, whichever is later. Employees will be removed from the program if: (1) they accept a continuing position in the Federal Government; or (2) decline an offer which they previously indicated would be acceptable.

Registration of Canal Zone Employees for Placement Assistance

7. Priority level 1 employees may register for placement assistance at any time following receipt of their separation notice but no later than 90 days after the effective date of their separation. Priority level 2 employees may register for placement assistance at any time within 5 years after April 1, 1979.

8. All Canal Zone employees may register for up to five occupational categories for which they qualify at the grade which they held (excluding grades GS-16 and above) and any lower grades which they are willing to accept. They may register for assistance in any two OPM regions or one region and Washington, D.C. A regional director or the Manager, Washington Area Office, may accept employees for registration even if they are already registered in two regions, if the employees are encountering unusual placement difficulties. This "extended registration" is only available to priority level 1 employees, and we would expect that in general it would be granted to employees who have been in the program for at least 6 months.

9. When employees register for the program, they and their personnel office will complete two copies of the modified Displaced Employee Registration Form (shown in the attachment to this letter) and two copies of a Standard Form 171. Agencies in the Canal Zone are responsible for duplicating their own supply of the registration form. One copy of each will be sent to the staffing division of each region for which the employee is registering by the employee's personnel office. The staffing division will ensure that all forms are completed properly. Special care should be taken to ensure that there is an indication as to the priority level in which the employee is to be placed. Staffing divisions will then duplicate both the registration forms and SF 171's, and send one copy of each to each area office within the region for which the employee has registered and eligible.

Referral of Employees

10. Area offices will prepare lists of series and grades for which Canal Zone employees are registered, one list for priority level 1 and another list for priority level 2. These lists will be distributed to the agencies in the geographic areas for which the area office has jurisdiction regardless of whether the area office is the register holding office for all the series on the list. For example, the Philadelphia Area Office will include series on its list even though the Washington Area Office may hold the register for those series. Register holding offices receiving requests for certificates of eligibles from agencies located in geographic areas where other area offices have issued the list of series for which hiring is restricted must contact the appropriate area office to determine whether a certificate may be issued. Area offices should publish their lists of covered series periodically as series are added or removed.

11. When an agency has a vacancy in a series which is contained on the current list published by the area office, the agency must call the area office to determine whether there are, in fact, any employees who could be referred. The area office will either give the agency permission to fill the vacancy or refer displaced employees.

12. The area office will refer qualified employees at the grade of the position and all other grades between that grade and the full performance grade of the position. Employees should not be referred at grades lower than the grade of the vacancy. For example, if an agency has a GS-9 Staffing Specialist position with a full performance level of GS-12, the area office will refer Staffing Specialists at grades GS-9 to GS-12. If the only available displaced employee is at the GS-12 level, the agency must either hire that individual at that level or not fill the position. For those positions in a formal training, intern, or apprentice program or formally identified as trainee positions, displaced employees will be referred only at the grade of the position and not at higher grades. Employees who already have obtained the knowledges and skills which they would acquire from the training will not be referred for trainee vacancies. For purposes of this paragraph, positions will be considered to be trainee positions only if the requirements in section 7-6 of FPM chapter 351 are met. Thus, for example, although most GS-5 professional positions are, by their nature, trainee positions, they are not automatically considered as such as the term is used here.

Other DE Eligibles

13. When Canal Zone employees are referred for a position, other employees in the Displaced Employee Program who are registered for that series and grade will be treated equally and must also be referred. The agency is permitted to select either the Canal Zone employee or the other employee in the Displaced Employee Program. Except for those cases where other employees in the Displaced Employee Program are referred along with Canal Zone employees, the Displaced Employee Program will continue to operate in the usual manner.

Exception to Merit Promotion

14. When employees are referred to positions which have known promotion potential, the agency shall select them without regard to competitive procedures.

Objections to Referrals

15. Agencies may object to referrals only on the basis that they do not meet published qualifications standards or approved selective factors. Area offices will have the final authority to resolve qualifications disputes. The fact that a referral is not considered by the agency to be among the best qualified applicants will not be acceptable as the basis for an objection.

Eligibility of Canal Zone Employees for the Displaced Employee Program

16. Priority level 1 employees who are in tenure group I and who have not been placed after being in the special placement assistance program for a full year may be enrolled in the Displaced Employee Program for an additional year. However, they may not enroll in the Displaced Employee Program if they were removed from the special placement assistance program before their year of eligibility expired. Priority level 1 employees in tenure group II and priority level 2 employees are not permitted to enroll in the Displaced Employee Program after their year of eligibility under the special placement assistance program has expired unless, of course, some action such as an involuntary separation of a priority level 2 employee changes his/her situation.

Removal of Employees from the Program

17. When an area office determines that a Canal Zone employee should be removed from the program, the staffing divisions in all the regions where the employee is registered, including the Washington Area Office must be notified by telephone, and a followup written confirmation. The staffing divisions have the responsibility of notifying the other area offices where the employee is registered that he/she is no longer in the program.

O'M OL 330- (1)

Contacting Canal Zone Employees

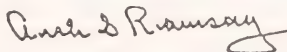
18. If an area office or an agency needs assistance in contacting an employee or personnel official in the Canal Zone, the Panama Canal Office in Washington, D.C., should be contacted by telephoning 202-724-0104.

Reporting Requirements

19. At least for the initial stages of this program, each region and the Washington Area Office should submit monthly reports to the Office of Personnel Management, Staffing Services, Room 61128, 1900 E Street, N.W., Washington, D.C. 20415, with the following information: (1) the number of vacancies to which employees have been referred; (2) the number of employees who have been referred; (3) the number of selections; (4) the number of pending vacancies; (5) the number of employees removed from the program including both those who have accepted positions and those who have declined offers; and, (6) the number of employees who are currently in the program. Each of the six items should have separate figures for priority level 1 and 2 employees. In addition, items 2 and 3 should have separate figures for the Canal Zone employees and other employees in the Displaced Employee Program. Items 5 and 6 should include only Canal Zone employees. Reports should have information as of the last Friday in each month and should be submitted no later than the following Friday. The first report should cover the month of April and is due May 4, 1979. Please note that all information in the reports should be cumulative rather than just monthly totals.

Comments and Suggestions

20. Any region having comments and suggestions about this program may call Fred Hollingsworth or David Mischel, on 632-4533.



Arch S. Ramsay, Deputy Associate Director
for Staffing

(Attachment previously inserted.)

Mr. MURPHY. Mr. Drummond, it seems to us that after October 1 for the next 30 months the police force of the Zone is going to play a more important role than other agencies, because of the dual patrols, and probably will have more to do with the morale of the employees during that period. And as a consequence are going to be highly appreciated by both the Commission that will be established as well as the Republic of Panama.

I am wondering if any of the Panamanian nationals in your organization have expressed a desire to go to the United States?

Mr. DRUMMOND. Several have, but not those that are here today.

Mr. MURPHY. We do know many members of your organization went up and joined our Immigration and Naturalization Service, and Customs, and agencies such as that, and I am wondering if any of the Panamanian nationals have expressed a desire to do so?

Mr. DRUMMOND. Yes, sir; they have. In fact, I have one that has just recently applied for and gotten his U.S. citizenship—Mr. Manning. Of course, this is something he has desired for the last 2 or 3 years. There are Panamanians that have gotten their wives to become U.S. citizens, to give them a hedge, so to speak, so they could, you know, if this legislation was not passed—

Mr. MURPHY. Does that come under the phrase of "women's liberation"?

Mr. DRUMMOND. Well I don't know their motivation for doing that, but they did.

Mr. MURPHY. The wives or the husbands?

Mr. DRUMMOND. The wives. My wife is Panamanian. Of course, I am United States. I doubt very much if my wife would, you know, at this present time, change her citizenship.

I mention here that, you know, most Panamanians, just like United States, have a desire to stay in their own country throughout whatever economic faults there may be. I, of course, intend going to the United States when these hearings are over; I intend resigning from the police union, and soon thereafter resign from the police force, if there is no other legislation. I believe that will eliminate this union as an entity to be considered in the future.

Mr. MURPHY. The AFL-CIO just gave you a charter?

Mr. DRUMMOND. Well, they may or may not pull my charter, for all of the activities that I have participated in. I am an AFGE local; I don't adhere to several statements made here. I believe a union is a political animal; it always will be and always has been. When you talk in terms of "Well, let the negotiators negotiate," I believe myself to be a taxpayer and a U.S. citizen, and I have every right to voice my opinion.

Now most of my members were, and probably still are, opposed to the treaty.

Mr. MURPHY. Well, that's something we have no control over. I will ask Mr. Bonior if he has any questions.

Mr. BONIOR. No.

Mr. MURPHY. Mr. Bauman?

Mr. BAUMAN. Mr. Drummond, you seem to imply in your remarks that despite the importance, as the chairman has described, of the U.S. police role in the transition, that after October 1 certain members of the police force, perhaps not all members of your union, are, in fiscal danger or in at least jurisdictional danger

because of their past activities. Is that a misinterpretation of one of your statements?

Mr. DRUMMOND. I don't consider that most of—

Mr. BAUMAN. Some?

Mr. DRUMMOND. If there was one, I could think of one; I can think of several that could be in some degree of danger, that the need to have an emigration right is a valid need.

All I am saying is, if they transfer or emigrate to the United States, that they continue that service which, because of their function here, they should be given that right to continue.

Mr. BAUMAN. What is the total number of police in the force?

Mr. DRUMMOND. Approximately 300 on the police force now.

Mr. BAUMAN. 300?

Mr. DRUMMOND. Approximately 300, more or less, on the police force today.

Mr. BAUMAN. And how many do you think would fall into the category that you described as being possibly in some trouble because of their past activities?

Mr. DRUMMOND. Five, ten.

Mr. BAUMAN. Would you include yourself in that number?

Mr. DRUMMOND. I know a lot of people don't like me; I don't know whether they would be motivated to go after me or not.

Mr. BAUMAN. Well, you, in fact, have had other personnel difficulties with the Government of Panama in the past, have you not?

Mr. DRUMMOND. That's correct; individuals within the government, Mr. Niedzialek being one.

Mr. BAUMAN. I do not want to get into personal cases; I think I am familiar with it, having been here before; but the thrust of my question is, do you really think there is any major problem with the functioning under the treaty during the transition period?

Mr. DRUMMOND. Yes, I do.

Mr. BAUMAN. You don't think it is going to work out?

Mr. DRUMMOND. No, sir, not under the system that they intend to devise. Now they intend having a liaison expansion. Now you have to understand that our liaison in this Police Division is an investigative function. Now their purpose is to gain good relations with the Guardia Nacional and the Republic of Panama.

Now there have been a number—not just from this union but a number of unions and civic councils—that have expressed apprehension that their rights will not be protected, et cetera, et cetera.

Mr. BAUMAN. We have heard a great deal of testimony on that.

Mr. DRUMMOND. What I am saying is, instead of having that expansion of that liaison function, that there be an individual response to the Congress that can monitor the activities, whatever they may be, not just for the U.S. citizen, but the non-U.S. citizen as well. Now, why I say—

Mr. BAUMAN. I suspect that would present a real problem to have a U.S. official available to Panamanian citizens as a place to make complaints.

Mr. DRUMMOND. The United States has a valid right to that. These employees will be working for the commission, and as such, you know, if they are being mobilized and forced to do something—now I don't say this is going to happen—but if you have someone there on site who has access to the Congress, then it could be that

the motivating factor is for the United States and the Republic of Panama on site to, in fact, adhere to what the Congress intended.

Mr. BAUMAN. Well, of course, the chairman's bill does address itself to much stronger congressional control over the affairs of the Canal Commission.

Mr. DRUMMOND. Right.

Mr. BAUMAN. I am not sure about after October 1, but up until then you could apparently meet with any subcommittee of Congress, any week here, as there seems to be quite a few coming down.

My major concern, based on your statement, was how police transition problems should be handled. That article of the treaty wasn't very specific, but then many other parts of the treaty weren't either.

Mr. DRUMMOND. I can only go back and study the history of this particular problem over the last several years. Now I have found that the Police Division, the liaison function, is not working.

Mr. BAUMAN. Are you aware of any present binational planning, between the Guardia Nacional and the Zonal Police?

Mr. DRUMMOND. Yes, I am sure, sir.

Mr. BAUMAN. There are such meetings?

Mr. DRUMMOND. Yes, sir; and, in fact, I have presented into evidence at the last committee a great deal of this documentation. I understand this committee will be working closely with the Post Office and Civil Service Committee and therefore I didn't, you know, want to burden this particular committee with all of that documentaion. It is accessible from the Post Office and Civil Service.

Mr. MURPHY. We will get it. We work very closely with that committee.

Mr. Wyatt?

Mr. Wyatt. No questions.

Mr. MURPHY. Mr. Lent?

Mr. LENT. I have nothing further.

Mr. MURPHY. Mr. Lowry?

Mr. LOWRY. No questions.

Mr. MURPHY. Mr. Carney and Governor Evans?

Mr. CARNEY. No questions.

Mr. EVANS. No.

Mr. MURPHY. Mr. Royo, do you have a statement?

Mr. ROYO. No.

Mr. MURPHY. Mr. Joseph?

Mr. JOSEPH. No, I don't.

Mr. MURPHY. Gentlemen, we really appreciate your indulgence today. If you will be coming to Washington before April 1, Mr Drummond, our record will be open until that time, and we would certainly appreciate your contacting Mr. Modglin, the subcommittee staff director, so we can incorporate some of your recommendations.

We do know you will play one of the very key roles in making a difficult transition work.

Mr. DRUMMOND. There is one point I would like to bring out on this retirement system: There was some question as to whether or not the employees were trying to get their cake and eat it too. That

is, they want a retirement system—2½ percent, or whatever it is—but they also want an easy out; and this was specifically directed to the pilots in the last committee, and one of the ways of solving this problem, I think, is just to have a contract. If you want to come under this so-called voluntary retirement system, you sign a contract with this particular agency for a certain number of years. If you don't, you don't get in, and that is an easy solution to solve it.

The moneys involved being in the Civil Service Retirement Fund itself, as I said, my initial reaction to that is, I see no reason that the taxpayers of the United States should pay for any funds that will be derived from the turnover of the canal. It is my personal position, and it always has been, the fund itself of the civil service fund or the agency paying for this can be easily worked out, I think, or do away with the retirement system altogether.

Mr. MURPHY. Thank you very much, Mr. Drummond.

The committee will stand adjourned.

[Whereupon, at 1:45 p.m. the hearing was adjourned.]

Mr. LOWRY [presiding]. I call the meeting to order, please. Chairman Murphy has asked us to apologize that they are detained at another hearing. Our schedule has been very full. It has been a very informative, rewarding 2 days, and they will proceed here, if they have the opportunity, upon leaving their other meeting.

This is Congressman Carney and Congressman Lent, and I am Congressman Mike Lowry. So if we could go ahead and proceed with this very important hearing.

Our first witness is Mr. Joe Cochran. Mr. Cochran, you are to be accompanied by other people, I believe Mr. Don Ginder.

You do not have a written statement.

STATEMENT OF JOSEPH E. COCHRAN, CIVILIAN PERSONNEL OFFICER, 193D INFANTRY BRIGADE, ACCOMPANIED BY DON B. GINDER, CIVILIAN PERSONNEL ADVISOR TO COMMANDER SOUTHCOM AND ASSISTANT CIVILIAN PERSONNEL OFFICER, 193D INFANTRY BRIGADE (CZ)

Mr. COCHRAN. No, sir, I do not have a prepared statement.

Sir, my name is Joseph Cochran. I am the civilian personnel officer for the 193d Infantry Brigade, which is the Army component here in the Canal Zone. With me today is Mr. Don Ginder. He is the assistant civilian personnel officer for the brigade, and also the personnel advisor to General McAuliffe. I have been working on this statement as late as this afternoon. It is not in a clean draft form. I will have it cleaned up and submit it to your committee.

It is a distinct pleasure to be able to speak to you this afternoon concerning the implications of the implementation of the Panama Canal Treaty on the local Department of Defense community. As a result of the implementation DOD will assume responsibility for several major functions now performed by the Panama Canal Company and Canal Zone Government. These include the operations of the schools, the hospitals, postal services, and retail sales, along with the necessary maintenance and administrative support for these functions. The people now working in these functions in the Panama Canal Company and Canal Zone Government have the right to transfer with their functions and compete for continuing employment as Department of Defense employees.

At present, DOD agencies in the Panama Canal area have estimated some 3,200 additional employees will be required to support these transferred functions. The Panama Canal Company/Canal Zone Government has identified some 3,000 employees for transfer eligibility. Unfortunately, not all of these employees can be accommodated in the DOD structure on a 1-to-1 basis, which will result in a severe recruitment problem in our maintenance and engineering areas, while at the same time we will be undergoing reduction in force in the commissary and supply functions.

We are, however, faced with a far more serious problem in carrying out our treaty responsibilities, and that is in the area of resources. Without funding and manpower spaces, and the authority to utilize them on a limited but immediate basis, the ability of the DOD components and especially the Army to efficiently prepare for and assume the responsibilities resulting from the implementation of the treaty will be seriously affected.

Lack of funding is now adversely impacting on the ability of various staff elements of the DOD components in Panama to accomplish treaty implementation planning actions. As an example of time criticality; the Army's Civilian Personnel Office must obtain additional personnel immediately to carry out those essential tasks required to transfer, place, or separate some 3,000 personnel transferred from the Panama Canal Company and the Canal Zone Government to the Army and the DOD dependent school system on October 1, 1979.

Civilian employees of the DOD activities in the Canal area are not covered by the same provisions of the Panama Canal Treaty of 1977, as employees of the Panama Canal Commission. Rather, they are covered by the agreement and implementation of article 4 of the Panama Canal Treaty. This agreement is called a status of forces agreement or SOFA.

More specifically, the SOFA requires that Panamanians have preference in employment, that the terms and conditions of employment for Panamanian employees conform to the general principles of the Panama labor laws, and that there will be no wage discrimination on the basis of nationality or sex with the exception that additional remuneration may be paid those personnel recruited from outside Panama.

In regard to these provisions I would like to make the following comments: It is necessary that DOD have the flexibility, as provided in both the administration bill and in Congressman Murphy's bill, to elect to use all or part of the Panama Canal Commission employment system once it is prescribed. If it is determined that provisions of the new system do not conform in general to the labor laws of Panama, DOD thus may be required to establish employment policies different than those developed by the Panama Canal Commission.

In view of the antiwage discrimination provision of the SOFA, it is essential that the language in the implementing legislation concerning additional remuneration be written in such a manner as to preclude any misunderstandings.

I would like to briefly discuss the issue of additional remuneration. Under current U.S. Government pay practices, heads of agencies may authorize up to 25 percent additional remuneration as a

recruitment and retention incentive. It is our understanding that the intent of both bills is to retain this flexibility.

Although our work force is predominantly Panamanian, we will still have a need to recruit employees from the United States or other countries when certain skills are not available locally. These include skills requiring advanced technology, and also security positions where only U.S. citizens may be employed. These needs must be met to assure that the ability of the DOD activities to perform their mission here is not impaired. Therefore, it is vital that the implementing legislation contain the provision to provide agencies the flexibility to pay the additional remuneration necessary to recruit employees from outside Panama.

To avoid any possible misunderstanding, the language in section 305 of the administration bill, and 147 of Congressman Murphy's bill, should state clearly that the additional remuneration provided in the treaty is defined as not to exceed the U.S. rate of pay, plus up to 25 percent.

The language as currently written could be interpreted to mean no more than 25 percent of the U.S. rate added to basic compensation, which, should the United States establish basic compensation rates in Panama which are less than U.S. rates, would result in the employee receiving less than the U.S. rate for the same grade level work, plus 25 percent of the U.S. rate in additional remuneration.

The type of labor relations system established in the Panama Canal area has major impact on all our personnel programs. The administration bill does not exclude DOD and other agencies from coverage under title 7 of the Civil Service Reform Act. This is consistent with the U.S. Government practice in other overseas areas where U.S. citizens have coverage under title 7, and non-U.S. citizens are covered by locally developed labor relations systems, which are consistent with local labor practices. We believe that following this practice for DOD activities in Panama is proper.

A final issue I would like to address is the matter of purchasing Panamanian social security for non-United States, non-appropriated fund employees. Although at this time we do not have definitive cost figures from the Republic of Panama, we ask that the proposal be given consideration. I am sure that the unions have spoken to this matter earlier today. Many of the people affected have been loyal employees for 25 years or more, and some are more than 60 years old. They are not eligible for social security in Panama, and many are not covered by the current non-appropriated fund retirement system, and even if they were, should they retire today, their pension would amount to almost nothing, since the system has only been in effect for a few years.

In closing, I want to thank you for the opportunity to pass on these remarks. We realize this is a difficult piece of legislation, but we urge timely passage in order for us to effectively carry out the provisions mandated by the treaty.

Thank you, sir.

Mr. LOWRY. Thank you. Don, did you want to add anything?

Mr. GINDER. No. I am just available for questions.

Mr. LOWRY. Thank you. Would you again state the difference in the language to clarify the 25 percent additional remuneration? I could not quite follow that.

Mr. COCHRAN. Perhaps I can explain it, sir, with an example. I understand that this has been addressed through State Department channels. If the DOD should establish a less than U.S.-wage rate here in Panama, the way that the legislation is written now, there could be a misunderstanding to the point that the additional remuneration would only be 25 percent of the stateside wage rate. For example, if the going rate in Panama were \$10,000 and \$20,000 for the same job in the States, then the additional remuneration for the job in Panama would only be 25 percent of \$20,000, or \$5,000 added to the \$10,000 base rate.

Mr. LOWRY. I think we have that language clear. Thank you. Congressman Lent?

Mr. LENT. Thank you, Mr. Chairman.

Mr. Cochran, thank you for your testimony.

As I understand it, the Government employees in the schools, hospitals, retail sales and postal service will be required to exercise an option for early retirement during a set period of time between April 1 and April 30 of this year; is that true? Or maybe I got it wrong.

Mr. COCHRAN. Yes, sir. This early retirement option is for Panama Canal Company/Canal Zone Government employees. Our DOD employees are not included in this early option.

Mr. LENT. I see. I have no further questions.

Mr. LOWRY. Thank you. Congressman Carney?

Mr. CARNEY. Mr. Cochran, I assume that the DOD employees who are involved in the zone right now, it will be business as usual as of October 1. Would that be correct?

Mr. COCHRAN. No, sir. We will have, of course, the individuals transferring from the Panama Canal Company/Canal Zone Government, depending on retention and standing; we could have some reduction-in-force action within the DOD component on a limited scale. The DOD will be expanding in a number of base operations areas, and picking up additional new missions, so there will be quite a bit of transition after October 1.

Mr. CARNEY. In other words, what you are saying, if I might clarify, is that when we have the RIF, if someone has seniority who worked for the Canal Zone or the Canal Zone Government, and they take a position with DOD, then their seniority would supersede someone who is already employed by DOD?

Mr. COCHRAN. That is correct, sir.

Mr. CARNEY. Now, I saw a chart yesterday at a briefing given by Major General McAuliffe, and it seemed to indicate that there are only two particular areas where there would be any type of problem. I believe one was in the retail food, or the PX system, that type of thing, where there would be a considerable amount of employees coming from Canal Zone Government or Canal Zone, Panama, the Canal employees, coming into DOD. Like there will be an influx of 650 and, in fact, you can absorb 129.

Mr. COCHRAN. Yes, sir.

Mr. CARNEY. So there would be an RIF in there, and you would have some employees that are now working in the military commissary that would be involved in that.

Mr. COCHRAN. Yes, sir; that is correct.

Mr. CARNEY. I think there was one other area, and it escapes me, but we are only talking about 12 or 13 employees. Other than that, we were going to have to recruit employees.

Mr. COCHRAN. Yes, sir. We anticipate quite a sizable recruitment problem in the base operations area, specifically in engineering-type functions, and maintenance functions.

Mr. CARNEY. Just for my curiosity, I assume you are a civilian, yourself. Is that correct?

Mr. COCHRAN. Yes, sir.

Mr. CARNEY. Is that a normal function? I am just curious, that in DOD the civilian personnel officer is a civilian.

Mr. COCHRAN. Yes, sir.

Mr. CARNEY. Thank you.

I have no further questions, Mr. Chairman.

Mr. LOWRY. Thank you, Congressman Carney.

Mr. Cochran, thank you. We will make sure that the question of the clarification on the 25-percent remuneration is discussed in the committee when we get into the markup session, so the chairman of the committee, and so on, will be informed you brought this up before us.

Mr. Cochran, thank you very much—and Mr. Ginder. If you will submit your remarks, we will put them in the record when we have them back. Thank you very much.

STATEMENT OF DR. JOSE A. FILOS-DIAZ, ASSISTANT CHIEF, PULMONARY SERVICE AND ALLERGY, GORGAS HOSPITAL

Mr. LOWRY. Dr. Filos Diaz, now we would like to call you. Dr. Filos Diaz, you may make any statement before us you would care to do.

Dr. FILOS DIAZ. Thank you, Chairman Lowry. I am Jose Antonio Filos Diaz, Panamanian physician on the staff of Gorgas Hospital, under the Health Bureau of the Canal Zone Government. On behalf of the Panamanian physicians and dentists working for the Canal Zone Government, I wish to express our appreciation to the committee for giving us the opportunity to detail for you the losses we shall suffer from our present total compensations and benefits upon entry into force of the Panama Canal Treaty of 1977. A written statement on this matter has been provided for you through Mr. De la Mater.

1. We shall lack guaranteed employment in our respective specialties and under civil service regulations throughout the life of the treaty.

2. We shall become ineligible for commissary, post exchange, postal and importation privileges with a subsequent decrease in our buying power of approximately 60 percent based on consumer price comparisons.

3. We shall incur a considerable increase in rent and utilities tariffs. Although the treaty specifies that we shall have first option to buy the dwellings we now occupy when these are transferred to the Republic of Panama, we have not had any definite statements in regard to this matter.

4. We and our dependents shall be ineligible for medical attention at any of the facilities in which we serve after the termination of a transitional period of 30 calendar months.

5. Our dependent children not enrolled in the school system prior to entry into force of the treaty will not be eligible to pursue and complete their education in the Canal Zone schools their siblings now attend.

6. Our leave benefits, acquired through bargaining between labor unions and management, will be diminished.

7. Continuing medical education and off the Isthmus training will be curtailed because of insufficient funding by the Department of Defense.

The sum total of these losses will be a drastic cut of over 50 percent from the total compensations and benefits that Panamanian physicians and dentists are now receiving. We feel this is in direct violation of paragraph 2(b) of article X of the Panama Canal Treaty of 1977, which states, and I quote:

The terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to entry into force of this treaty than those in effect immediately prior to that date.

Mr. Chairman, let me thank you again for allowing me to express what we Panamanian physicians and dentists believe are the losses which will be derived.

[Dr. Filos Diaz' complete statement follows:]

PANAMANIAN NATIONALS PHYSICIANS AND DENTISTS POSITION STATEMENT ON ISSUES RELATED TO THE TERMS AND CONDITIONS OF EMPLOYMENT UNDER THE DEPARTMENT OF DEFENSE AFTER THE ENTRY INTO FORCE OF THE PANAMA CANAL TREATY OF 1977—CIVILIAN PHYSICIANS AND DENTIST ASSOCIATION MEMBERS

Panamanian nationals, who presently work for the Canal Zone Government as civilian physicians and dentists, have reviewed and analyzed those matters that deriving from the new Panama Canal Treaty affect us, our dependents and our new working conditions. It is evident from our analysis, that the terms and conditions of employment will be very unfavorable to those physicians and dentists already employed by the Canal Zone Government; since no provisions are made under the terms of the Panama Canal Treaty of 1977 as to the job permanence and the retention of fringe benefits acquired from our qualifying position as physicians and dentists for the Canal Zone Government.

The lack of a guaranteed employment in the specialty and under Civil Service Regulations throughout the life of the Treaty; the ineligibility for Commissary, Post Exchange, Postal and Importation Privileges with a subsequent decrease on our buying power of approximately 60 percent based on Consumer Price Comparisons; the transfer of housing benefits to the Republic of Panama with its inevitable increase in the rent and utilities tariff; the ineligibility of the employee and his dependents for medical attention at any of the facilities in which they serve after the termination of a transitional period of thirty (30) calendar months; the ineligibility of dependent children, not enrolled in the school system prior to the entry into force of the treaty, to pursue and complete their education at the same schools older siblings attend; the diminution in leave benefits that were once acquired through bargaining between labor unions and management; and the projected limitations on continuing medical education and off-the-Isthmus-training because of insufficient funding by the Department of Defense, constitute a drastic cut of over 50 percent from the total compensations and benefits that physicians and dentists are receiving prior to the entry into force of the treaty. This is in direct violation of paragraph 2(b) of Article X of the Panama Canal Treaty of 1977 expressing that "the terms and conditions of employment to be established will in general be no less favorable to persons already employed by the Panama Canal Company or Canal Zone Government prior to entry into force of this treaty than those in effect immediately prior to that date."

Approximately 60 percent of the physicians and dentists presently employed by the Canal Zone Government are Panamanian nationals that by virtue of their positions were designated by the Vice-President of the Panama Canal Company, as qualifying for quarters without regards to citizenship, at the time of their employ-

ment under either the Panama Canal Personnel Manual Chapter 737 (now abolished) or the Amended Interim Housing Regulations. It was desirable, at the time the policy was designed, to have physicians reside in an area of easy access to the Health Care Facilities, for the purpose of adequate and efficient coverage. Inherent with the status of Canal Zone resident, are the benefits of commissary, postal, importation and schooling privileges that will be immediately lost by the Panamanian nationals physicians and dentists when the Treaty goes into effect in 1979. Our concern is grave, in particular for those assigned to areas that are lacking adequate and hygienic housing, commissary, medical and school facilities; as is the case on the Atlantic side of the Isthmus. At this time other avenues that could provide stability and security are being sought in the United States or in private practice in Panama.

With the purpose then, to aid those in charge of planning for treaty implementation and knowing that in accordance with Article VII of the Agreement in Implementation of Article IV of the Panama Canal Treaty the United States Force, in order to set forth their rights and obligations as the employer, is to draw up regulations which contain the terms, conditions, and pre-requisites of all categories of their civilian employees; it is recommended, that Panamanian physicians and dentists presently working for the Canal Zone Government and transferred to the Department of Defense as a result of a transfer of function, be included as members of the Civilian Component under Article I of the Agreement in Implementation of Article IV of the Panama Canal Treaty under paragraph 4 describing the categories of Members of the Civilian Component as one of the categories of persons which could be agreed upon as exceptions by the two governments. All other benefits, privileges, and incentives then could be accordingly derived, thus providing security to the physicians who remain on the job and enhancing future recruitment efforts from the Panama area; being it also a financially sound proposition for the Department of Defense.

Were this not the case, then, appropriate legislation must be enacted to provide substantial and adequate compensation in addition to base salary to offset the cut in compensations and benefits for Panamanian nationals physicians and dentists transferred to the Department of Defense, effective on the day the transfer of function occurs.

The Department of Defense must also establish policies which will assure the Panamanian national physicians and dentists a guaranteed period of employment throughout the life of the Treaty; equality of wages, authorize salary increases, and premium compensation for overtime; equality of opportunities for continuing medical education and off-the-Isthmus-training; and a Professional Privilege Plan by which Panamanian national physicians and dentists working for the Forces, their spouse and children be entitled to seek medical, dental, optical and emergency care at the Department of Defense facilities after the termination of the transitional period of thirty (30) calendar months.

Mr. LOWRY. Dr. Filos-Diaz, do you have, representing the physicians and dentists, the suggestions to go into the implementing legislation to address these problems you are speaking to?

Dr. FILOS-DIAZ. After giving this matter much thought, and reading the treaty quite carefully, we feel that there is a simple and easy solution to this matter, at least from our point of view. If we are included as members of the civilian components as stated in article I of the agreement and implementation of article IV of the Panama Canal Treaty under paragraph 4(c), describing the categories of members of the civilian components as one of the categories of persons which could be agreed upon as exceptions by the two governments, all other benefits, privileges and incentives then could be accordingly derived, thus providing security to the physicians who remain on the job and enhancing future recruitment effort from the Panama area, being it also a financially sound proposition for the Department of Defense, we believe.

Mr. LOWRY. How many individuals would we be speaking about?

Dr. FILOS-DIAZ. We would be speaking presently of—at least I am talking now about members of the staff, not the interns and residents who are actually temporary employees; it would be at least

40 members of the medical staffs, both at Coco Solo Hospital and in Gorgas Hospital. We are now a total of about 60 Panamanian physicians, and I don't have the exact figures at hand. This is actually just an approximation.

Mr. LOWRY. Thank you.

Congressman Lent.

Mr. LENT. I have no questions, Mr. Chairman.

Mr. LOWRY. Congressman Carney.

Mr. CARNEY. Of those 60 physicians that are Panamanian, have they been recruited recently, or has it been the process for years to recruit?

Dr. FILOS-DIAZ. This is a process that has occurred for years. For example, I have been employed by the Panama Canal Company since 1955, when I came back here as a resident. But there are people who have been as recently employed as a year ago. There is a pediatrician who was employed a year ago and was offered the position with certain outlooks, and now he finds himself in a very awkward position. He was already a practicing physician, a pediatrician in Florida, and he gave up his practice to come down here, and now he finds that perhaps it is the wrong thing; he did the wrong thing.

Mr. CARNEY. Would it be safe to assume that 40 physicians would not have a problem finding employment or adequate employment in your profession in Panama?

Dr. FILOS-DIAZ. As things stand at present, I think I could not say yes to that question. In fact, it is becoming more and more difficult for a young physician to get started in Panama because of many reasons, and as will probably occur in the United States, the government is taking more and more active participation in the rendering of health care and is financing a lot of the health care so that a lot of the private practice has been actually diminishing at a quite fast rate.

Mr. CARNEY. I noted that you said one of the physicians had a practice in Florida. Is that a common practice of the Panamanian physicians who are working in the Canal Zone, that perhaps they did have their residences and established at one time a practice in the States?

Dr. FILOS-DIAZ. I would have to answer no to that question. Most of us have never practiced private medicine in the United States. Most of us have had, if not all our training, part of our training in the United States.

Mr. CARNEY. Would it be fair, then, to assume that most of the doctors who are involved in the medical field for Canal Zone Government started their careers there?

Dr. FILOS-DIAZ. I would say probably yes.

Mr. CARNEY. So then the transition to a medical practice in Panama, in Panama, itself, would be somewhat of a change, let's put it that way.

Dr. FILOS-DIAZ. It certainly would be, and I would say it would probably be very difficult.

Mr. CARNEY. A dramatic change for most?

Dr. FILOS-DIAZ. I would say so; yes.

Mr. CARNEY. The reason I question you in this vein is that I can certainly understand the problems that many of the Panamanian

nationals will have with RIF's and going back into the economy and not finding jobs, but I thought perhaps, and I am finding out, that isn't the case; that there would be a great need for experienced physicians like yourself, and I would have to think like all 40 of them in Panama, and it would be a great demand for them both in private medicine and in medicine that would be provided by the Panamanian Government. For the matter of private practice, I would assume now that none of you are in private.

Dr. FILOS DIAZ. None of us are in private practice; all are full-time employees—I would not say all of us, but most of us—are full-time employees. Some are only temporary employees, and I am not referring to those. I am referring only to those who are permanent employees of Canal Zone Government.

Mr. CARNEY. Are all of the doctors we are speaking of associated with the two hospitals?

Dr. FILOS DIAZ. They are either in Coco Solo or in Gorgas.

Mr. CARNEY. And that primarily is their function?

Dr. FILOS DIAZ. That is our only function.

Mr. CARNEY. Your only function, and they have no other outside work?

Dr. FILOS DIAZ. No, sir.

Mr. CARNEY. Thank you very much, Doctor.

Mr. LOWRY. Thank you. Thank you very much, Doctor.

Dr. FILOS DIAZ. Thank you very much. I appreciate it.

STATEMENT OF JOSE OLLER, NM-7, PURCHASING AGENT, USAFSCO

Mr. LOWRY. Mr. Jose Oller.

Mr. OLLER. Mr. Chairman, my name is Jose Oller, and I represent the Panamanian civilian employees working for the Air Force. Our situation varies a little bit to what has been said before to this committee, and what I am going to do is to give you an idea of what the reaction of our civilian employees of Panamanian citizenship at both Howard and Albrook Air Force Bases feel about it.

But the limitation of time allowed to the representative, which is me, 48 hours, to gather enough information to transmit to this committee the queries, worries, fears and preoccupations of the Panamanian civilian force working at Howard Air Force Base and Albrook Air Force Station have barely permitted me to exchange ideas and request information from a limited number of employees on their points of view and concern in regard to the transfer of function of approximately 3,200 Panama Canal/Canal Zone Government employees from their present positions to DOD agencies in the Panama area. It should be understood, therefore, that the considerations analyzed and delineated in this statement to the committee will only represent a partial consideration of the subject being discussed today.

We have been informed that 107 employees of the Postal Division of the PC/CZG will be transferred to the Military Airlift Command, 1202 Air Postal Squadron, Howard Air Force Base, Canal Zone. The main concern of all employees interviewed as a result of this action can be summarized in the following questions that I respectfully bring before you, for your consideration and answer.

Question 1. Is the regularly employed Panamanian civilian of any division or section of the Air Force, other than the postal section, subject to displacement by the incoming PC/CZG employees?

Question 2. Is the regularly employed Panamanian civilian of the Air Force to continue to enjoy, after the 30-month transitional period, the health and hospitalization benefits, retirement provisions, Federal Government life insurance, regular leave system, pay increases and all other current benefits which are now available to him?

Question 3. Is the regularly employed Panamanian civilian of the Air Force to continue under the provisions of the direct-hire system of the DOD?

Question 4. Will the new employees of DOD agencies in the Panama area, to be employed after 30 September 1979, be hired under the direct-hire system?

Question 5. As far as retirement benefits are concerned, how will Panamanian civilian employees of the Air Force with less than 5 years of service be affected after the implementation of the 1977 treaty October 1, 1979?

Question 6. Will non-U.S. citizen Air Force employees and non-Federal U.S.-citizen residents of the Republic of Panama be allowed to send their children to DOD schools on a tuition basis, as permitted heretofore?

Question 7. The U.S. Government as employer of PC/CZG agencies is giving its employees guarantees of continued employment stability by the transfer of function action. Are DOD Panamanian civilian employees to expect the same treatment under the same basic principle if a similar situation occurred to these DOD employees?

Question 8. Will the tendency of standardizing and equalizing wage levels and classifications of Panamanian civilian employees of DOD agencies in the Panama area to the Republic of Panama wage levels and classifications after the implementation period be applicable to the regularly employed Panamanian civilians of the Air Force after such date?

Question 9. Security or sensitive positions now restricted to U.S. citizens have been the result of controversial interpretation to bar non-U.S. citizens. Will the number of these positions progressively decrease after the 30-month implementation period?

Question 10. Is the legislation concerning the implementation of the 1977 treaty having difficulties within the House of Representatives to be passed and adopted as law, and, if so, what would be the consequences if not adopted timely and as originally expected?

Mr. Chairman, the above questions are only a few. All Air Force civilian employees in the Panama area await the impact of the 1977 treaty with strong feelings of insecurity. Our main concern is to convey to you, honorable members of the subcommittee, that being aware of the complexity of this historical action and period, we also feel that there are many questions that either cannot be answered at the present, and that others will go unanswered, thus contributing to the frustration of all Panamanian civilian employees of the Air Force.

This is the message of my coemployees of the Air Force, sir, and I do thank you personally and in their name for the opportunity.

Mr. LOWRY. Mr. Oller, thank you. Obviously that message is very strong, and I certainly don't have the answer to those questions specifically. I would like to start with No. 10. That one I did notice, which was the timing and what would be the results implementing legislation being held up for a significant period of time. We have received extensive testimony in these 2 days about the dire consequences of the uncertainty and that the longer the uncertainty goes on, obviously how much worse that does make the situation.

Chairman Murphy, responding to someone today, said that he believed legislation certainly will be amended legislation. It is possible that it will be on the President's desk by June 1st of this year.

Now, we have to all understand when you talk about legislation going through Congress that is a very iffy proposition, but that was the chairman's statement this morning, and I believe we feel a definite commitment towards trying to remove the uncertainty regardless of the aspect of the amendments that will be made to this legislation.

Second, before I move on, let me say that we will ask our staff to return to you in writing as specific as possible an answer to these other nine questions, and we do have your address, and we will get as good as possible answers to these questions returned to you as soon as they can do that.

Third, during our discussions in the committee, when we go back to Washington, D.C., and are working on the legislation, we will be considering these questions that you have brought up here as the other questions people have brought up in these 2 days, and that will be taken into consideration. As you know, the President's stated position in the treaty as adopted by the Senate was that the rights of the employees should not deteriorate through any of the processes that go through in this very important transitional period and the results of the treaty. It would seem that if the spirit of the treaty then was to be upheld, that there would be positive answers to many of the questions that are raised here, and that is as much as I have the capability of stating at this time. But these will strongly be considered, and we will do the best job we can to get you more definite answers.

Congressman Lent?

Mr. OLLER. Thank you.

Mr. LENT. I want to thank Mr. Oller for his testimony, and I have no questions, Mr. Chairman.

Mr. MURPHY. Congressman Carney?

Mr. CARNEY. I would just like to add that being cognizant of the limitations we placed upon you of 48 hours, certainly you can continue to put forth to this committee or this subcommittee any questions you would like, and you simply have to submit it to the committee via mail to Washington, and we will address any additional questions that you would have. So I suggest you go back and meet with your people, you have some more time, you can't do it one to one, it is probably not as effective, but nonetheless if you did write, telling us your additional concerns, as well as giving us input where you think we might be able to adjust the various

implementing legislations that we have, we would certainly take that into consideration.

And I might add that the last 2 days, and I think you brought it out very vividly by bringing a litany of questions, because of uncertainties I am just as uncertain as you are, and I am just as dismayed as you are that we are this far down the line and we don't have answers, and we don't know where to go. But rest assured this committee and the members of this committee are going to work very hard to make certain we have something available to you so we can make the type of decisions that we are going to have to make in the very near future.

Mr. OLLER. Thank you.

Mr. LOWRY. That you, Mr. Oller. I think we are lucky you only had 48 hours. If you had twice that much, we would be in worse shape.

Mr. OLLER. Thank you very much.

Mr. LOWRY. Thank you.

Mr. Del Craig? Go right ahead.

**STATEMENT OF DEL CRAIG, COMMISSARY OFFICER, USA
TROOP SUPPORT AGENCY, ACCOMPANIED BY MAJ. DAVID
CHINN, TREATY COORDINATOR, USA TSA**

Mr. CRAIG. Mr. Chairman, I am Mr. Del Craig, the area commissary commander for the Troop Support Agency Commissary in the Canal Zone. With me this morning I have Maj. David Chinn, who is the treaty coordinator for the commissary here in the Canal.

We appreciate this opportunity to discuss the impact that the implementation of the treaty will have on the commissary system.

First, I will give you a brief outline of our present operation. We operate three commissaries: two on the Pacific side of the isthmus and one on the Atlantic side, plus two centralized warehouses which support the three stores. We also have the responsibility to support military groups in 16 Central and South American countries.

Upon implementation of the treaty on 1 October 1979, TSA will assume additional responsibility for the support of approximately 2,400 Panama Canal Commission employees and 1,200 former Panama Canal employees who are transferring to the DOD system. In order to support the additional workload, TSA has agreed to operate two of the present Panama Canal Company Zone supermarkets: Balboa and Coco Solo, commencing on October 1, 1979 for a period not to exceed 30 months. We feel that with the five commissaries operating on a staggered schedule, which will cover 7 days per week, we can offer the patron sufficient time to facilitate their shopping needs.

However, there is an area of concern that could drastically affect our ability to support the new mission. This is the transfer of function which I believe is a monumental problem facing TSA. The September 1978 transfer of function ruling by the Civil Service Commission allows 600 to 800 Panama Canal Company employees the right to bump into 329 authorized positions in the TSA commissary system. The impact of this ruling could be very damaging. Ninety percent of the present TSA work force will be affected in one manner or another, that is, an individual could be bumped

from a supervisory position to a lesser position, transferred to another work area within the 193d Infantry Brigade or released from the civil service work force. Of significant importance, all of the top level managers will be replaced by Panama Canal employees. This includes the present commissary officer, deputy commissary officer and all three store managers.

The personnel that will replace the present TSA work force are not familiar with our commissary procedures as there is no correlation between the Panama Canal Company commissary operation and Troop Support Agency's operation. The new transfer of function ruling makes it possible for a Panama Canal employee working in the hardware or the shoe store to transfer into a commissary that sells only subsistence. Personnel transferring into the lower echelons will not have much effect on our mission. However, personnel in the top echelons and supervisory levels must have some knowledge in the retail food operation. Again, the present transfer of function ruling does not allow for these safeguards.

In summation, if the present transfer of function ruling is not revised, the task of supporting the commissary patrons will be horrendous and will result in a degradation of service. The 193d Infantry Brigade Commander has taken issue with the latest ruling in hopes that another opinion will be rendered to lessen the impact on the commissary system and the Troop Support Agency commander fully supports his decision.

Mr. Chairman, Troop Support Agency is of the opinion that if the September 1978 Civil Service Commission ruling on transfer of function is allowed to stand, there could be a severe adverse effect on our ability to perform the mission after 1 October 1979. Further, this decision is totally unfair to the present dedicated employees who have been a part of the Army commissary system over the past years.

This concludes my testimony/statement. If you have any questions, I will answer them at this time.

I thank you very much.

Mr. LOWRY. Thank you, Mr. Craig. Would it be possible for you to submit to this committee for the record a copy of that Civil Service Commission ruling, the September 1978 ruling that you are referring to? We don't have that and at least to me that is basically new information.

Mr. CRAIG. Yes, sir. We have to get it from civilian personnel, and we will get it to you fully.

Mr. LOWRY. OK. And what would be your recommendation and the brigade commander's recommendation of a better way to handle it; you know, to revise the ruling and a better way to handle the transfer?

Mr. CRAIG. I can't tell you the exact date of the first ruling on the transfer of function, but in that first ruling there was a portion that stated that an employee had to be working 51 percent of his time in the food retail business to be authorized to transfer into a commissary system. I believe that that was a good ruling. To allow somebody working in a shoe department to transfer into a commissary food store would definitely be detrimental to the operation. To answer your question specifically, the September 1978 transfer of function must be changed back to the first ruling that states 51

percent of the individual's time must have been working in the food retail business to be eligible for TOF.

Mr. LOWRY. Thank you.

Congressman Lent?

Mr. LENT. I have no questions, Mr. Chairman.

Mr. MURPHY. Congressman Carney?

Mr. CARNEY. Yes.

Mr. CRAIG, the people working in the area you work in, NTSA and commissary systems, civilians working in it, do they have more stability than the military personnel? In other words, what I am saying is that the major is here on assignment perhaps for 3 years, but civilians here, have they been here for 12, 14 years just like other civilians?

Mr. CRAIG. Ninety-five percent of my work force are local Panamanian work force; they have been here from Day One. They have been on the job up to as high as 37 years.

Mr. CARNEY. You don't have the reassignment problems.

Mr. CRAIG. No, sir, we don't.

Mr. CARNEY. That the officers and enlisted men have.

Mr. CRAIG. U.S. civilians, like myself, we come down here for a maximum of 5 years, 2-year contract extendable up to 5 years. At that time, we rotate. The major comes down on a 3-year assignment, extendable up to a certain portion, but the local stays here forever.

Mr. CARNEY. OK. Now the top echelon people that you speak of being replaced, and you are the top man, I imagine, in and on your way out—

Mr. CRAIG. Yes, sir.

Mr. CARNEY. They are professionals who take assignment abroad, and they will go on a 2-year contract with a 3-year extension, and whatever it may be, and that is part of the profession they choose; is that correct?

Mr. CRAIG. Yes. We are regular civil servants, working in the commissary field.

Mr. CARNEY. And you continually rotate to different places.

Mr. CRAIG. If we desire to; yes, sir.

Mr. CARNEY. You could not stay here more than 5 years.

Mr. CRAIG. Overseas is a maximum of 5 years, but in the States I could stay in one position for 30 years without moving, depending on my own needs or my own wishes.

Mr. CARNEY. Do you know—you are talking of 10 percent of the people working in that facility now as being American citizens who have come on a tour, so to say—do you know how many of them are already into this extension period and how many are about ready to be transferred?

Mr. CRAIG. I am into my extension period by 2 months. The rest of those—

Mr. CARNEY. So 26 months.

Mr. CRAIG. Yes, sir. The other civilians I have, U.S. civilians, their time will be running out within the next year, and then they would be authorized to extend if they were not being bumped.

Mr. CARNEY. You are in an extended period. Those who are not, would there be a breach of contract?

Mr. CRAIG. No, sir.

Mr. CARNEY. There is not a breach of contract?

Mr. CRAIG. No, sir. The transfer of function right authorizes those people to be bumped by time and service time in-grade by category, what I mean by category is all my staff, top level staff, are retirees, military retirees. We are in a lower category than, say, the regular civil servant, so they would automatically be bumped.

Mr. CARNEY. OK. I would just like to summarize now what we are faced with, OK? One is a complete change of the administration of this service, and more than likely those who will take the administration function do not have any experience at all in the retail food end, and, in fact, no experience in DOD commissaries.

Mr. CRAIG. Yes, I think the last portion, that DOD commissary system, Troop Support Agency; as of right now, we are going under a new computerized system. It will be for replenishing our stocks, accounting, and accounting for personnel. The people coming over from the Panama Canal side of the house have never heard of this system. It will be totally alien to them. Those people that are coming over after October 1 will have to make this operation work, and they have never heard of it prior to this date.

Mr. CARNEY. Plus the operation expands about 40 percent.

Mr. CRAIG. Yes, Congressman.

Mr. CARNEY. That is going to be a difficult situation, to say the least.

Mr. CRAIG. It is not only the top level managers; it is down into my chief accountant for one. He is gone. Take a chief accountant out of any operation, what does that do to the operation? The meat market manager, produce managers, right on down.

Mr. LOWRY. Thank you.

Mr. CARNEY. Mr. Chairman, is it permissible to question the other witnesses? Do you have a statement, Major?

Major CHINN. No, sir.

Mr. CARNEY. Major, if you don't mind, if you don't have a statement, then I would like to ask you a couple of questions. From a military standpoint what do you think, what type of impact will you have from a military standpoint?

Major CHINN. From the military standpoint there is no impact. I will remain; nobody can—

Mr. CARNEY. I am not talking about that; I am talking about, it is almost obvious there is going to be chaos in the ability to provide food to the people of the military down here. And that has to have some sort of impact on your operation, I would think.

Major CHINN. No, it would be no impact; it is just that as the time for the treaty comes near, we would just increase our requisitioning cycle to take care of the expanded personnel that will be coming in authorized to shop in the commissaries.

Mr. CARNEY. So you feel, then, that this is not going to have an adverse effect.

Major CHINN. The transfer of function will in the sense that if the people who are coming in do not understand the Army commissary operations it could end up being chaos. We could have a difficulty in the requisitioning cycle.

Mr. CARNEY. On a scale of 1-to-10—10 being chaos—where do you think we are going to fall?

Major CHINN. OK. Are you saying if the complete transfer function goes into being? I would say on a scale of nine.

Mr. CARNEY. Thank you. I know sometimes it is hard for a military person to answer questions; so if you put it on a scale, then it gets them off the hook. He does not have to go back to the colonel and say, "Gee, I had to answer; everybody answer the question." I try to make it easy for him. That's all. Thank you very much, gentlemen.

Mr. LOWRY. Thank you.

Mr. Craig, this definitely will be a sub taken up.

Mr. CRAIG. Thank you.

Mr. LOWRY. Mr. Robert Hughes?

STATEMENT OF ROBERT HUGHES, GEODESIST, NM-12, INTER-AMERICAN GEODETIC SURVEY

Mr. HUGHES. Thank you, Mr. Chairman. I am Robert Hughes. I am an employee of the Defense Mapping Agency, Inter American Geodetic Survey, with headquarters here in the Canal Zone. I would like to share with you the urgent needs of more than 3,500 employees of the Department of Defense in the Canal Zone. These Federal employees will be undergoing the same changes next October that will be impacting on all other employees in the Canal Zone, including those of the Panama Canal Company Government. Department of Defense employees, however, are not being equitably considered by the proposed legislation. This discriminatory treatment is already causing serious concern among DOD employees, and if not rectified before the new treaty takes effect in October, it will undoubtedly severely hinder the successful implementation of the treaty. As Members of Congress, I am sure you will see it as your duty to provide for equal treatment for all Federal employees within the Canal Zone.

At the present time, there are approximately 3,500 persons employed by the Department of Defense in the Canal Zone. This workforce has traditionally worked side-by-side and hand-in-hand with the Panama Canal Company and the Canal Zone Government. The cooperation between agencies found here in the zone was assured in 1958 when President Eisenhower signed Executive Order 10794, which established the Canal Zone merit system. Under the Canal Zone merit system, Federal employees worked under completely equal employment conditions. This merit system provided Panama Canal Company and DOD employees uniformity of job classification standards, uniformity of compensation and equality in pay rates, allowances and other benefits. In short, for the past 20 years, DOD civilian employees and Panama Canal Company employees have enjoyed essentially the same benefits and job protection.

In addition to the equality in employment rights in the Canal Zone, the living environment has also remained identical for all Federal employees. All Canal Zone residents, for example, are protected by a single legal and law enforcement system.

The picture I have tried to portray as accurately as possible is one showing the situation as it exists in the Canal Zone, a situation where all U.S. Federal employees have historically lived under equal conditions at home and on the job.

Why, then, should it be necessary for DOD civilians to require a special presentation at all, since there are clearly no real differences between employees in the Canal Zone? After all, is there not legislation pending before Congress that will implement the new Canal treaties in the just and fair way so frequently promised by our President and the Senate?

There is indeed legislation before the U.S. Congress for the implementation of the treaties, but there exist serious omissions which are causing distress and anger among a loyal and dedicated group of Federal employees. What I refer to is the exclusion of DOD employees from certain portions of the legislation. The draft legislation does not provide for equal treatment of DOD civilians in the Canal Zone. In fact, they have been very selectively excluded from significant portions of the proposed legislation. This is causing frustration among DOD civilians, who cannot understand why, after 20 years of equality, they are no longer at par with other Federal employees in the Canal Zone. Ironically, this selectivity has worked in reverse for at least one group of employees. The Smithsonian Institution, for example, was specifically excluded from the Canal Zone merit system in 1958. And yet, as we see in section 325, subsection (j) of the legislation, the Smithsonian is to be considered in "executive agency" under the provisions of the new treaty. There is no similar mention of the Department of Defense.

We of the DOD urge you to rectify this injustice. Federal employees in the Canal Zone have always worked under the same merit system of employment, including all employment benefits. We have worked as a united force with united goals. We have lived under equal conditions with equal benefits. And now, in these critical times one group of employees, that is, those of DOD should not be discriminated against.

This potentially dangerous situation can be easily avoided by including DOD employees in the portions of the proposed legislation where they have been omitted. Only a few words need to be changed, but the importance of those few words can hardly be exaggerated. The livelihood and careers of essential and dedicated employees depend directly upon the treatment and consideration they receive in the legislation. It is in the best interest of the U.S. Government that they be treated equally.

In the handout of my presentation, pages 4 and 5, I specifically reference three examples of the omissions to which I refer, namely, sections 322, 325, and 326 of the legislation. The precedent of job parity established by Executive Order 10794, implementing the Canal Zone merit system in the close-knit government community in 1958 in the Canal Zone must be maintained. We have all worked under the same merit system, under equal social and economic standards. The possibility of a fragmented merit system or a system of unequal employment benefits is a frightening thing, indeed, and would be greeted by conditions of anger and frustration by the Canal Zone workforce.

I urge you to recognize the importance of the changes, and to work toward implementing them in the legislation. It is time the DOD employees in the Canal Zone gain recognition and representation in the treaty legislation. The employees of DOD will be here

on October 1, of this year when the new treaty goes into effect. And they, like all Federal employees in the Canal Zone, will be in the midst of change. Therefore, we ask you to provide them the same benefits, rights, and considerations as extended to Panama Canal Company and Canal Zone Government employees.

The Civil Service Commission has recognized the fact that the implementation of the new treaty will have a devastating impact on the Federal workforce in the Canal Zone. On January 6, 1979, the Commission ruled that the Canal Zone is considered a major RIF area, and is to be accorded all the benefits pertaining to that special status.

Incredibly, the ruling affects only employees of the Panama Canal Company. This blatant discrimination against DOD civilians has aroused much unnecessary anger. It is an established fact that many employees who lose their jobs with the Panama Canal Company will transfer into DOD. The absorption of these employees will create a situation of overstrength within DOD, and will eventually lead to a RIF. DOD civilians will be losing their jobs, and therefore equal treatment for these employees must be extended.

We look to the U.S. Congress to amend the legislation to include the DOD. Equality for all Federal employees in the Canal Zone must be assured.

Thank you, Mr. Chairman, for permitting me to express these views.

[Pages 4 and 5 of Mr. Hughes' statement, referred to above, follow:]

REMAINDER OF MR. HUGHES STATEMENT

I would like to take time to point out three examples in the legislation that demonstrate the gross inequalities that exist, and also the simple manner by which they can be rectified.

If you will read chapter 2, section 322, concerning employee placement rights, you will notice the wording states "a United State citizen who, immediately preceding the effective date of exchange of instruments of ratification of the Panama Canal Treaty of 1977 was an employee of the Panama Canal Company or Canal Zone Government. . ." This paragraph should be changed to read ". . . an employee of the Panama Canal Company, Canal Zone Government, Department of Defense or other executive agency. . ." The 'DOD' must be included in this paragraph to insure equality among all employees, which will be essential during the life of the new treaty.

In section 325, subsection (h), which specifies early retirement eligibility, the legislation reads as follows: "An employee of the Panama Canal Commission or of an executive agency conducting operations in the Canal Zone. . .". It hardly seems possible that on treaty day, the unified work force in the Canal Zone, all of whom are covered by the C.Z. merit system must be divided along such discriminatory lines. The wording must be altered to read "an employee of the Panama Canal Commission, Department of Defense or other executive agency. . .". With parity guaranteed by this simple change in wording there can be no doubt that a working system of employment equality will be maintained.

In section 326, subsection (n), concerning early retirement computation, the legislation states: ". . . an employee retiring under this subchapter who was employed by the Panama Canal Company or Canal Zone Government immediately prior to the entry into force of the Panama Canal Treaty of 1977. . .". This is yet another example of the exclusion of DOD employees. The wording once again must be altered to read ". . . an employee retiring under this subchapter who was employed by the Panama Canal Company, Canal Zone Government, Department of Defense or other executive agency. . .".

These three examples demonstrate the discriminatory wording in the legislation as it now stands. Remarkably, in every case the wording has only to be altered by inserting the term "Department of Defense or other executive agency". This one

phrase is the keystone to insure equal non-discriminatory treatment for all affected workers.

Mr. LOWRY. Thank you, Mr. Hughes. On early retirement provisions that are now recommended, would you have an estimate of a percentage of DOD's civilian employees that might opt for early retirement?

Mr. HUGHES. No, sir; I don't have those figures available to me.

Mr. LOWRY. Thank you.

Mr. Lent?

Mr. LENT. I have no questions.

Mr. LOWRY. Mr. Carney.

Mr. CARNEY. I just would like to make two comments I think rather than asking any questions, and that is in your statement I am glad that you did point out that the promises that were so frequently made were made by the President and the Senate, and the House of Representatives has not made those promises. We have the unfortunate task of fulfilling the Senate's promises, but we will try to do the best we can. And the one area that you pointed out I think that is of great concern is the statement of January 6 of 1979, where the Civil Service Commission recognizes that this will have a devastating impact on this area and DOD is excluded from that, and I think it is something we will look into immediately and see if there is anything we can do to change that.

I thank you very much.

Mr. HUGHES. Mr. Chairman, if I might make one statement.

Mr. LOWRY. Yes, sir.

Mr. HUGHES. Through listening to the testimony that has been given here today, I fear there might be some misunderstanding as to the status of the DOD's civilians that are working here in the Canal Zone. There are DOD civilians working in the Canal Zone who are here under a 5-year contract. In other words, after fulfilling the 5 years, they must return to CONUS with the exception of certain extensions that can be granted in special cases. However, this came into effect in August 1966. I don't have a firm date I can give you here today. But all of the employees that were DOD civilians prior to that date were grandfathered, and those employees are eligible to remain in the canal area for the duration of their careers. In addition, within the last 2 months or so, the Department of Defense has issued an instruction which states that certain positions, for example, all of those positions I believe grade 6 or below, and all positions grade 11 or above, can be granted exemptions from this 5-year rotational plan. Positions 11 and above, for example, if the position requires the knowledge of a foreign language, or if the position requires certain knowledge of customs and mores or involves certain contacts within foreign countries, then these positions can be exempted. And I think it is important that the committee is aware of the fact that there will be DOD civilians working here in the Canal Zone after the treaty goes into effect for some time. In other words, there is a definite possibility, for example, that there will be DOD civilians working through the year 1999, and it is my feeling that these people who will be working under the same conditions as the Panama Canal employees must be granted the equal benefits.

Thank you, Mr. Chairman.

Mr. LOWRY. Mr. Hughes, thank you. Your statement will, of course, be a part of the record and will definitely be considered by the subcommittee and full committee of Merchant Marine and Fisheries when we get to the markup session, so thank you very much.

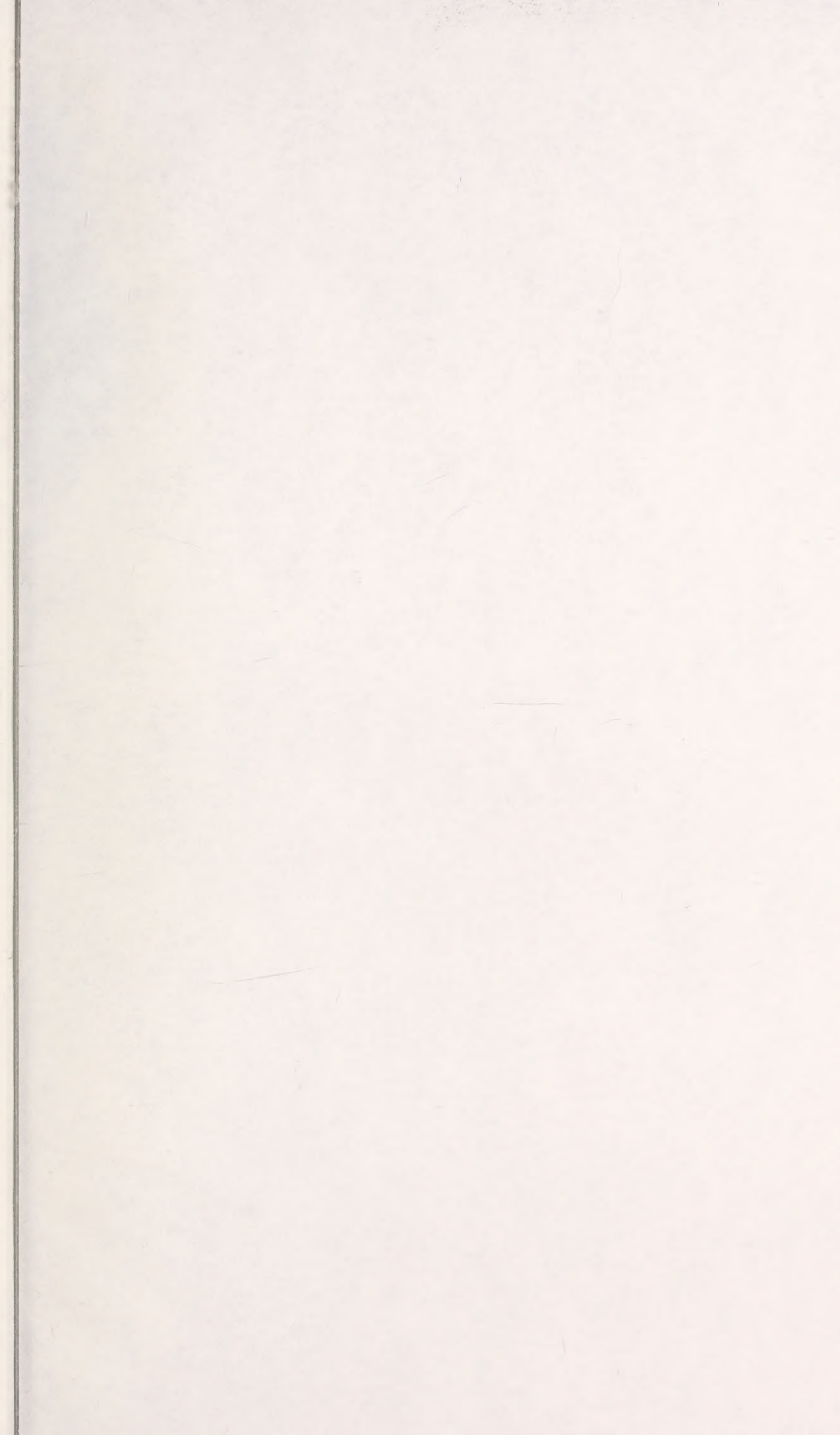
Mr. HUGHES. Thank you.

Mr. LOWRY. I would like to thank everyone for being patient, and staying and waiting for us, and on behalf of this committee this has been very informative information. So thank you very much.

The committee is adjourned.

[Whereupon, the subcommittee adjourned, to reconvene upon the call of the Chair.]





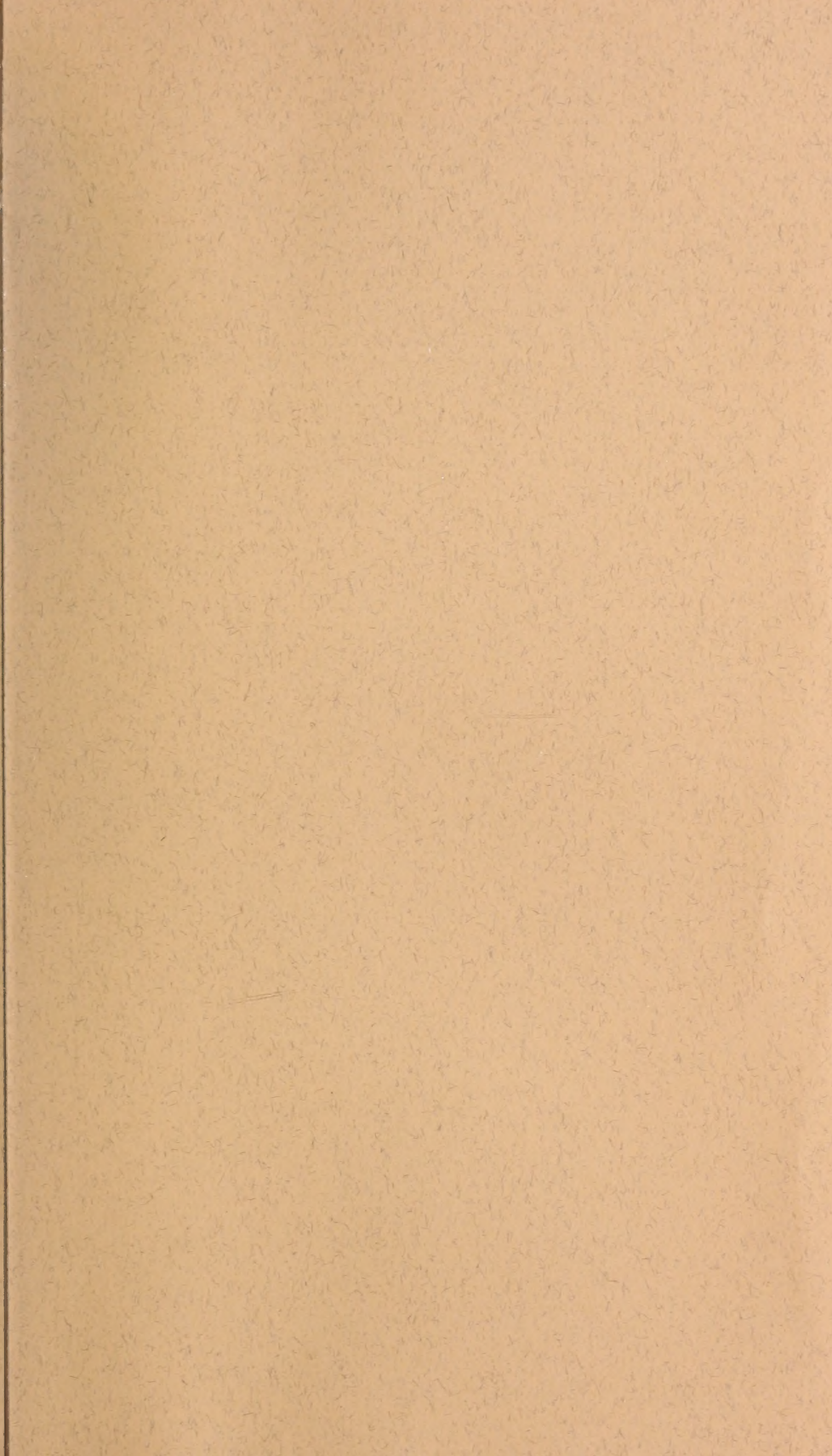
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Mr. Hughes: Thank you.

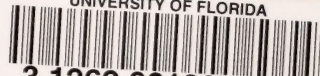
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The committee is adjourned.

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